

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
5785 HOUSE JUDICIARY

3. Supply running water and reasonable amounts of hot water and heat at all times unless there is a severe energy shortage or the furnace or hot water heater is in the complete control of the tenant (as in a house).

4. If requested by the tenant, supply and maintain adequate locks and keys. If the lock can be easily broken, it does not provide adequate protection. A tenant can demand that a proper lock be put on the door.

If the dwelling is in an isolated area where a public sewer or water service is not available, the landlord does not have to provide those services; however, if the landlord privately provides these services at the beginning of the rental agreement, he/she must maintain the services. (AS 34.03.100(b))

In the renting of a house or duplex, the landlord and tenant may agree IN WRITING that the tenant will be responsible for (a) (5) and (6) of the LANDLORD DUTIES listed above. Also, if it is done in good faith, the landlord and tenant of any dwelling may agree that the tenant will do specific repairs, remodeling or maintenance jobs in exchange for payment or reduction of rent, etc. THE LANDLORD CANNOT FORCE A TENANT TO AGREE TO THIS KIND OF ARRANGEMENT TO GET OUT OF HIS/HER OBLIGATIONS AS A LANDLORD. It must be made in WRITING, signed by both parties. Also, this agreement cannot be made if it will reduce or endanger the services to the other tenants. (AS 34.03.100(c))

This is a check list of the main things the landlord should repair and maintain:

—doors, windows, roof, floors, walls and ceilings that leak or have holes.

—plumbing fixtures (must work, not leak) and provide a reasonable amount of running, hot and cold water at a reasonable water pressure. (vii).

—a working and safe stove and oven.

—a reliable heating system which provides heat to all rooms in a reasonable amount.

—a safe electrical system (no loose or exposed wires, sockets that do not arc) and enough power so the system does not blow fuses when used normally).

—windows or fans that provide fresh air when wanted.

—enough garbage cans to provide an adequate and safe trash removal service.

—extermination service if roaches, rats, mice or other pests infest the building, apartment or property.

—proper maintenance of any vacuum cleaners, washing machines, dish washers, etc. supplied by the landlord (when not abused or broken by the tenant).

tenant remedies

If there is a serious problem with something mentioned above that is not the tenant's fault, the law provides remedies for the tenant. The landlord must be given a reasonable chance to fix the problem, but if he/she won't fix it, here is what the tenant can do:

1. **MOVE.** The tenant gives the landlord a WRITTEN notice describing the problem and saying that if the problem is not fixed within 10 days, he/she will move within 20 days. If the problem is fixed within 10 days, but the tenant still wants to move, a 30-day notice is required. (AS 34.03.160(a))

2. **EMERGENCY REPAIR AND RENT REDUCTIONS.** If an essential service (heat, water, sewer, electricity or plumbing) breaks down, the tenant may get the problem fixed and deduct the actual and reasonable expenses from the next month's rent. But first, the tenant must give the landlord a written notice that this is what he/she plans to do, and if the problem is major, the tenant must provide the landlord with a copy of the estimated repair costs. However, once written notice is given, the tenant may immediately proceed with repairs if the cost is very great. It is advisable to contact a lawyer before starting the repairs. If the problem cannot be fixed right away and it makes the dwelling unlivable, the tenant can give the landlord written notice that he/she is moving into substitute housing. The tenant is excused from paying rent until the problem is cured and may charge the landlord for the cost in excess of rent of staying in a hotel or other substitute housing until the problem is fixed. (AS 34.03.160)

3. **WITHHOLD RENT.** In some cases where the problem is really serious, it may reduce the value of the dwelling. If this happens, tenants may give written notice to their landlord that they refuse to pay a part of their rent until the problem is fixed. Since landlords and tenants often disagree on what is a serious problem, it is wise to see a lawyer before using this remedy.

4. **SUE FOR DAMAGES.** In addition to the remedies listed above, the tenant can sue if the tenant or his/her family have suffered because the landlord failed to fix something after written notice. If the total amount is less than \$2,000.00, the tenant may sue in the state small claims court. For larger claims, the tenant should see a lawyer. (AS 34.03.160(b))

If the tenant notified the landlord IN WRITING of a problem, and the landlord fixed it within the time allowed, BUT through the landlord's negligence, virtually the same thing happens again within 6 months, the tenant may terminate the rental agreement with a 10-day written notice. The notice must specify the problem and the date of termination. Tenants may not terminate a rental agreement for problems they themselves have caused. (AS 34.03.160)

condemned dwellings

Buildings inspected and found to be very unsafe may be condemned. The city or borough housing inspector will tell the landlord that he/she must repair the problem or he/she will be taken to court. If the problems are so serious that the inspector feels the building is beyond repair, the inspector will order that it be torn down.

If a building is condemned, the tenant may come home one day and find a sign posted on the building saying that the place is unsafe for anyone to live there. Tenants should immediately find out when the inspector and landlord expect at the tenants to move. They should also see an attorney before paying any more rent.

fire/casualty damage

If the dwelling is substantially damaged by a fire or other casualty (earthquake, flood, etc.) depending on the amount of damage, there are a couple of things the tenant can do:

1. **Partial damage.** When only a part of the dwelling is damaged and it is lawful for the tenant to continue to live there, the tenant should move out of the damaged part. The rent can be reduced to an

amount which reflects the fair value of the undamaged part of the dwelling. (AS 34.03.200(b))

2. **Total destruction.** If the tenant can no longer live in the place, he/she can move out, notify the landlord and stop paying rent. The rental agreement and responsibility to pay rent ends when the tenant moves. (AS 34.03.200(c))

After the tenant moves, the landlord must return any deposits and/or pre-paid rent to the tenant. Rent paid for the time the tenant didn't live in the dwelling must be returned (counted from the day of the casualty and including the day of the casualty) to the tenant. (AS 34.03.200)

HOUSING CODES

The primary objective of a housing code is the protection of the health and safety of the people who live in houses and apartments. A minimum standard of maintenance is set, making the landlord (not the tenants) responsible for keeping rental property in decent shape. The section of the law that called LANDLORD DUTIES explains what the landlord is expected to repair and maintain.

The law protects tenants who use their right to report code violations. If they call to complain and ask for an inspection, the landlord cannot take revenge by evicting or harassing the tenant. Alaska has a statewide fire code but does not have a statewide housing code.

The following places do have local housing codes. Report substandard conditions to:

- Anchorage
 - Building Safety Division at 786-8211
 - Health & Environmental Protection at 264-4720
- Barbarus
 - Barbarus Bldg. Office - 452-1881
- Juneau
 - Engineering Department Building Division - 586-5231
- Ketchikan
 - City Building Inspector - 225-3111
- Seward
 - City Clerk - 234-7843
- Seward
 - City Building Inspector - 224-3337
- Kenai
 - City Building Inspector - 283-7537
- Soldotna
 - City Building Inspector - 282-9107
- Homer
 - Planning & Zoning - 235-8121
- Palmer
 - Building Department - 745-2105



tenant duties

These are the duties which the law says tenants must perform to keep their part of the rental agreement. (AS 34.03.120)

1. Do keep the dwelling as clean and safe as they can.

2. Do dispose of garbage and other waste in a clean and safe manner.
 3. Do keep plumbing fixtures clean.
 4. Do pay the rent on time.
 5. Do use all facilities and appliances provided reasonably in the manner in which intended.
 6. Do not deliberately or carelessly damage, destroy, deface or remove any part of the premises or fixtures (or allow their guests to do so).
 7. Do replace or repair anything damaged or destroyed because of the tenant's accident or carelessness.
 8. Do conduct themselves in a manner that does not unreasonably disturb their neighbors' peaceful enjoyment of the premises. (AS 34.03.120)
- If tenants do not uphold their end of the bargain, the landlord can evict them. Eviction notices must be in writing and be specific about the problem in question. If the tenants were notified of a problem and remedied the problem within the time allowed, but the problem occurs again within 6 months, the landlord may evict the tenant using a 10-day written notice. The notice must specify the problem and the date of termination.

absence/abandonment by the tenant

When the landlord specifies in his/her rental agreement, tenants can be required to tell the landlord every time they plan to be gone for more than 7 days. If the tenant plans to be gone only 2 or 3 days, then friends that he/she will actually be gone for more than a week, the tenant must notify the landlord as soon as possible. This is to help protect the property from pipes freezing, etc. Tenants who willfully fail to give notice of being gone can be sued by the landlord for 1 1/2 times the actual damages of any such casualty which occurs during their absence. When tenants are gone, the landlord may go into their place only if there is an emergency or with proper notice. See the section titled "Privacy." (AS 34.03.230)

A landlord may assume the dwelling has been abandoned when (AS 34.03.360.1)

1. The tenant is behind in rent, and
2. The tenant has left his/her personal belongings in the dwelling but has been gone for more than 7 straight days, and
3. The tenant did not notify the landlord they would be gone for more than seven days, providing their rental agreement requested this.

When a dwelling has been abandoned, the landlord may enter, clean up the place and re-rent it. The possession of the former tenant to pay rent stops when a new tenant moves in (providing the landlord makes a good faith effort to promptly re-rent the place at a fair rental rate) (AS 34.03.230(C)).

If a tenant abandons a dwelling and leaves personal belongings behind, the landlord must notify the tenant of where the property is being held and that the tenant has a minimum of 15 days to remove the property. Property not removed within the time allowed may be:

1. sold at public sale (if property not sold may be disposed of)
2. disposed of as the landlord sees fit if it is food or something perishable
3. destroyed or otherwise disposed of

(such as a charitable condition) when the cost of having a public sale would exceed the value of the items.

The landlord's notice to the tenant must specify what the landlord plans to do with the items if the tenant doesn't re-claim them.

The landlord has to exercise reasonable care over the tenant's belongings and keep them in a safe place but is not responsible for loss not caused by the landlord's own neglect or deliberate action. If the tenant's property is stored in the dwelling, storage charges may not be more than the rent. When the property is held at a commercial storage company, the landlord can pass these costs on to the tenant. (AS 34.03.260(B))

To hold a public sale, the landlord should post a written or printed sale notice in 3 specific places within 5 miles of the place of the sale not less than 10 days prior to the sale. One of the notices shall be posted at the post office nearest the place of the sale. (AS 09.35.130)

Tenants cannot make claims against a landlord who has fully exercised his rights regarding abandonment, however, when a landlord, deliberately or negligently, violates the law governing abandonment, the tenant may sue for actual damages and an equal amount of penal damages. (AS 34.03.260(D))

MOVING OUT



proper notice

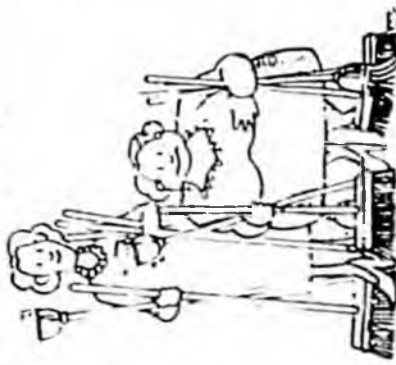
When a tenant wants to move from a month-to-month tenancy (not a lease), the law requires that he/she give a written notice to the landlord at least 30 days before the rental due date specified in the termination date in the notice. If the tenant wishes to terminate between rental due dates, the notice must be delivered on or before the rental due date which falls at least 30 days before the move-out date.

For example, if rent is due the 8th of each month and the tenant wishes to move March 8, the notice must be delivered to the landlord by February 8. If the same tenant wishes to move on March 21st, notice would still need to be delivered by February 8th.

Tenants who wish to terminate a week-to-week tenancy must give a written notice to the landlord at least 14 days before the termination date specified in the notice. For example, a week-to-week tenant wishing to move on July 26th, must give notice by July 12th.

Tenants on a month-to-month tenancy who do not give proper notice are responsible for rent for one rental period or until the place is re-rented, whichever is less. This does not include tenants who are moving because of serious problems when the landlord has not tried in addition, tenants who give improper notice may experience a delay in getting their deposit back. See the section "Deposit

When the landlord accepts a moving notice but the tenant doesn't move when they said they would, the landlord may sue for eviction. If the tenant stays beyond the specified move-out date, willfully and not in good faith, the landlord may also sue for 1 1/2 times actual damages.



cleaning and damages

Tenants are expected to clean the dwelling completely before moving, including the cabinets, toilet and all appliances. Other cleaning responsibilities should have been listed in the rental agreement. In case of the landlord's posted rules, in general, tenants are expected to leave a place as clean as they found it. This is where a third-party inspection would be helpful - see the section "Moving in" in Rental Housing.

When the place has been cleaned, the tenant and landlord should inspect the place together, using the damage list prepared when the tenant first moved in as a guide. Tenants cannot be charged for ordinary wear and tear. (See definition of ordinary use at AS 34.03.360(18)) But, since landlords and tenants sometimes disagree on what "ordinary wear and tear" is, here are some guidelines:

1. A family with children or pets will ordinarily wear things out faster. This type of wear is the landlord's responsibility because the landlord can expect the condition when renting to such a "family"



2. If something cannot be cleaned because of the landlord's act or negligence, it is the landlord's responsibility (non-washable part on the wall, water leaks from faulty plumbing staining the walls, etc.) (AS 34.03.360(7))

3. Ordinary shampooing carpets, washing walls, etc. are major cleaning tasks and the law is unclear about whose responsibility these are. If landlords wish tenants to perform these tasks, they should be stated in the rental agreement, in case of the landlord's posted rules.

4. Planting the walls, repairing holes in the carpet, replacing drawers, etc. are tenant responsibilities only if such repair or replacement was needed due to tenant negligence.



Damages caused by the tenant are the tenant's responsibility, even if they were caused by an accident or a guest. The damage deposit can be used by the landlord in the amount needed to make the repairs. If the tenant has purposely destroyed the landlord's property (throwing a rock through the window, writing on the walls, smashing furniture, etc.), the tenant may be guilty of vandalism and face up to one year in prison, a \$500 fine and will still have to pay for the damage.



deposit return

When the tenant gives proper notice for moving out, the landlord must return a written (itemized) list of accrued rent and damages together with the amount due the tenant within 14 days of the tenant vacating the dwelling (AS 34.03.070(g)). The notice may be hand-delivered or mailed to the tenant's last known address. If the landlord does not know the new mailing address of the tenant but knows or has reason to know how to contact the tenant, the landlord must make a reasonable effort to deliver the notice and refund to the tenant (AS 34.03.070(g)).

If the tenant does not give proper notice or abandons the dwelling, the landlord may take up to 30 days after the tenancy is terminated (or after he/she becomes aware of the abandonment) to return the deposit or a written notice of accrued rent and damages (AS 34.03.070(g)).

WHAT MAY THE LANDLORD KEEP FROM THE DEPOSIT?

The law says deposit money may be kept only if the tenant:

- causes damage;
- owes back rent;
- doesn't leave the place as clean as it was when he/she moved in (other than ordinary wear and tear that cannot be removed by cleaning); or
- does not comply with previously agreed upon requirements of deposit return as specified in the lease, rental agreement or landlord's posted rules (AS 34.03.070(b)).

Some landlords try to get around the law by specifying that unless tenants stay for a certain time period (6 months, for example) that the tenant automatically forfeits a portion of the security deposit. The At-

torney General's Office is researching the legality of such automatic deposit forfeitures. It appears that since such a practice does not comply with the law's definitions of a deposit, it may be illegal. Check with an attorney.



more on moving out: eviction

There are 4 types of eviction notices that may be given by the landlord:

1. Late rent, refusal to allow access, and second notice of tenant's breaking agreement.

-A 10-day written notice is required when a landlord is evicting because the tenant is behind in his/her rent. If the rent is paid before the 10 days are up, the tenant may stay. The notice must tell tenants they have the choice of paying or moving (AS 34.03.220(b)).

Ten days notice is also required when the landlord is evicting because the tenant: 1) refused the landlord's reasonable requests to enter the dwelling (AS 34.03.200(a)), or has substantially broken the rental agreement more than once in a six-month period (AS 34.03.220(a)); 2) if a landlord accepts a partial rent payment after giving a 10-day notice for non-payment of rent, the landlord's right to terminate the tenancy may be waived (AS 34.03.240).

2. Tenant Breach of Other Duties

-A 20-day written notice is required when the landlord is evicting because the tenant has broken an important part of the rental agreement, such as using the place illegally, etc., or if the tenant fails to maintain the rental unit with the result that the health and safety of others are endangered. The landlord may deliver a written notice to correct the problem within 10 days of the receipt of the notice, or the tenant will have to move within 20 days. If the problem is corrected, the tenant may stay (AS 34.03.220(a)).

When there is a breach of a lease, it is recommended that a 20-day notice be given. Leases may not be terminated without cause.



3. Landlord's Choice to Terminate a Month-to-Month Rental

-A 30-day written notice is required when the landlord wishes to evict a tenant on a month-to-month rental agreement for general reasons. This notice must be delivered 30 days in advance of the rental due date specified in the notice as the termination date. For example, if a tenant's rent is due on the 15th of the month and the landlord wishes the tenant to move by October 15th, the tenant must receive the notice on or before September 15th. The

30-day notice does not have to specify the reason for the eviction but it is a good idea to list the reason so both the landlord and the tenant clearly understand the notice. Thirty-day evictions may not be used when there is a lease. (To terminate a lease, the landlord must have a just reason, such as the tenant's breaking of the lease. See the paragraph 2 in this section.)



4. Mobile Home Evictions

A one-year written notice is required when a mobile home park operator wishes to evict tenants and their mobile homes because the operator is converting the land to a common interest community, such as condominiums.

More Rules on Mobile Home Evictions

While most renters can be evicted for a variety of reasons, the law says mobile home park tenants can be evicted from the park only for the reasons stated in AS 34.03.225, which are:

1. the tenants are behind in the space rent;
2. the tenants are violating a law or ordinance, and the violation endangers the health, safety or welfare of the others in the park; or
3. the tenant has violated a provision of the rental agreement or lease signed by both parties, and the provision being violated is reasonable and normally enforceable by state law; or
4. there is to be a change in the use of the land on which the park is located. (This reason requires the landlord to give at least 90 days notice.)

Except for item number 4 above, the same notices are required to evict mobile home park tenants as for other types of tenants (AS 34.03.040(c), 34.03.080(d), 34.03.130(c) and 34.03.225).

Evictions, General Information

Many people think that tenants cannot be evicted in the winter in Alaska or if they have small children. This is not true.

Notices to Quit (eviction) from the landlord must be in writing and must be served to the tenant by:

1. delivering the notice in person; or
2. leaving the notice at the dwelling when the tenant is absent from the premises; or
3. sending the notice by registered or certified mail, in which case an additional 3 days is added to the required notice period (AS 09.45.100).

Once the tenants receive notice to terminate notice to quit, or eviction notice from the landlord, they may move at any time during the notice period. They owe rent up until the end of the notice period, however.

Lockouts, Utility Shutoffs or Threats

The landlord may not harass the tenant by:

- shutting off utilities;
- changing the locks;
- taking the tenant's belongings;
- taking possession of the dwelling by force without a court hearing.

if the landlord unlawfully removes or excludes the tenant from the premises or lawfully diminishes services, the tenant may sue the landlord to regain entry to the premises or terminate the rental agreement and in either case recover up to 1 1/2 times actual damages.

Uttering a charge or threat of criminal trespass against tenants in order to evict them without the benefit of a court hearing is an abuse of the landlord-tenant law. Police who participate in such an action may be guilty of official misconduct. Tenants may sue both the landlord and the police for conspiracy to abuse the law. See an attorney. (AS 11 56.853)



Subsidized Housing

If you receive a housing subsidy or live in a federal or state housing project, you may have rights in addition to those provided by state law. For example, if you receive a section 8 subsidy from ASHA, the landlord may not be able to evict you without good cause. Contact your local ASHA office if you have questions.

Retaliation by landlord is Prohibited (AS 34 03.310)

The landlord may not "retaliate" (explained below) against a tenant because:

1. the tenant complains to the landlord about the landlord's failure to perform the landlord's responsibilities; OR

2. the tenant uses his/her legal rights under the Alaska Landlord-Tenant Law; OR

3. the tenant organizes or joins a tenant union or similar organization; OR

4. the tenant complains to a government agency responsible for enforcement of governmental housing controls.

The law prohibits "retaliation" by the landlord. This means the landlord cannot:

1. raise the rent; OR

2. decrease services (such as shutting off utilities, etc.); OR

3. evict or threaten to evict the tenant (AS 34 03 310(a)).

If the tenants feel illegal retaliation has occurred against them, they can move out or stay and in either case sue for as much as 1 1/2 times their actual damages (AS 34 03 210).

An eviction is not considered illegal retaliation if the landlord evicts because:

—the tenant is behind in the rent; or

—the landlord must make repairs to meet code requirements or big changes that require a vacant dwelling;

—the tenant is using the place for illegal purposes;

—the landlord wants to use the place for something other than a rental dwelling for at least 6 months, or for personal purposes;

—the property is being sold and the new owner intends to use it for personal use, substantially remodel or demolish, or change it from rental use (AS 34 03 310 (c)).

Rent increases are not considered illegal retaliation if the landlord can show, in good faith,

—a recent sizeable increase in taxes or cost of maintaining the property (not including the cost of repairing something because of a tenant's complaint) (AS 34 03 310(d)(1)); or

—that similar dwellings are being rented for a higher rate and in fact the landlord has been undercharging (AS 34 03 310 (d)(3)) or

—that the true costs of major improvements made to the property are being passed on to all tenants fairly and equably (AS 34 03 310(d)(2)).

What if the Tenant Won't Move?

If the tenant refuses to move at the end of the notice to quit period the landlord must go to court to evict.

The landlord may not take over the rental dwelling by force or by locking out the tenant.

The court calls most eviction suits by landlords "Forcible Entry and Detainer" (F.E.D.) cases. Here is how an F.E.D. case works:

The landlord files his/her claim with the court. The tenant will receive a complaint and summons to appear in court. The hearing will be scheduled 2-4 days after the summons is served. At the hearing, both the landlord and the tenant will have an opportunity to tell their side of the story.

If the judge finds in favor of the tenant, the tenant will be allowed to stay and the landlord may have to pay the tenant's attorney fees.

If the judge finds in favor of the landlord, the tenant will be served a court order to move. The judge will decide how long before the tenant has to be out. If the tenant still doesn't move, the landlord can get a writ of assistance from the courts that will permit the police to assist in the eviction. In addition, the tenant may have to pay the landlord's attorney fees.

Some Anchorage judges have granted the right to a jury trial when requested by the landlord or the tenant. To date, there has been no Alaska appellate decision affirming this right in an F.E.D. action.

F.E.D. cases are usually handled by district court. For more information on evictions, read AS 09 45.060-100. Forcible Entry and Detainer. Information on preparing an eviction suit may be found in the Alaska Rules of Court-Civil Rules (read rule 85) and in the Alaska Rules of Court-Civil Forms (review forms 170 and 171). The Rules of Court are available in the Alaska Law Library or your local magistrate's office. More specific answers to questions on F.E.D.'s may be found in a booklet prepared by the Administrative Office of the Alaska Court System, inquirs at your local court or magistrate's office.

Tenants may have a legal defense or claim against the landlord which could prevent an eviction. Tenants should act quickly if they don't want to be evicted. See an attorney.

settling landlord/tenant disputes

When landlords and tenants disagree, sometimes tempers flare and things may be said and/or done which are wholly outside the law. Sometimes the disagreement becomes just plain pique.

If there is disagreement on any issue, rent, or that the court looks favorably on "good faith" reasonable actions that is action taken in an honest, forthright manner. Try to remain calm. Be sure you are doing everything you can to prevent the situation from getting worse. Gather



your facts and PUT THEM IN WRITING. Be sure to pay attention to sections of the law that require written notices and that specify the number of days allowed for landlords or tenants to remedy disagreeable situations. Present your problem to the other party in writing, clearly stating what you want to change and what you will do if the situation doesn't change.

Generally speaking the rental of dwellings is a business, and as in any other business, both parties should conduct themselves in a fair, honest manner. There are not many agencies that will mediate landlord/tenant disputes, and problems are frequently not serious enough to require a lawyer or go to court. Most landlord/tenant problems could be settled by both parties acting "in good faith."

If serious problems do arise, it is always advisable to see a lawyer. But first, give the other person a chance by trying to work it out together.

Common Rental Problems

The most common problem facing landlords and tenants is a failure to get things in writing. In many sections of the law written notices are required; in other cases, getting things in writing is just good business. Written evidence will help people remember what was agreed upon and may be helpful if you should need to go to court. Putting things in writing will often trigger other legal protections.

Other common problems and their remedies are:

1 Problem:

Landlord tells a tenant to move immediately or cuts off essential services without warning.

Remedy:

Evictions are controlled by specific sections of the law. Tenants do not have to move if these rules are not followed and may sue for 1 1/2 times actual damages.

2 Problem:

Tenant refuses to move after receiving an eviction notice.



Remedy:

The landlord should go to court for an eviction order. The State Troopers or city police will carry out the order. In addition, the landlord may sue for 1 1/2 times the actual damages. See the section on Moving Out of Rental Housing.

3 Problem:

The tenant's deposit is not returned and the landlord did not give, in writing, justifiable reasons for keeping the deposit.

Remedy:

Tenants may sue for twice the amount kept. See the section on Moving Out.

4 Problem:

Tenant is habitually late with rent or repeatedly breaks rules.

Remedy:

Late rent and other problems which are repeated within a 6-month period may be grounds for eviction. Read the section on "Moving Out" or see a lawyer.

Where to Go For Help

Both landlords and tenants can get help from the following sources:

1. The Cooperative Extension Service can provide you with copies of this publication but cannot give legal advice.

Anchorage	786-1080
Bethel	543-2503
Cordova	424-3448
Fairbanks	452-1530
Homer	235-8178
Juneau	586-7102
Ketchikan	225-3290
Delta Junction	896-4215
Kodiak	486-6368
Nome	443-2320
Palmer	745-3360
Sitka	747-6065
Soldotna	282-5824

2. For non-judicial dispute assistance, Anchorage residents can contact the Conflict Resolution Center, P.O. Box 102105, Anchorage, 277-8136 (landlord-tenant line). The (non-profit) Center can assist you in resolving your dispute through conciliation, mediation and/or arbitration for a nominal fee.

3. To file a complaint about the landlord's false advertising, chronic misuse of deposit money or fraud, or for copies of this publication, see the Consumer Protection Section, Alaska Department of Law.

Anchorage
1031 W. 4th, Suite 300
Anchorage, AK 99501
279-0428

Fairbanks
1st National Center
100 Cushman, Suite 400
Fairbanks, AK 99701
456-8588

Juneau
Pouch K. State Capitol
(5 S. Fower Bldg., Suite 214 4th & Harms)
Juneau, AK 99811
85-3692

Valdez
District Attorney's Office, Courthouse
P.O. Box 871
Valdez, AK 99688
835-2482

4. Tenants with low incomes may call Alaska Legal Services for attorney help. If your landlord tries to evict you, be sure you mention the eviction when you call Legal Services:

Anchorage	272-9431
Barrow	852-2311
Bethel	543-2237
Dillingham	843-8883
Fairbanks	452-5401 or 452-5181
Juneau	586-6425
Ketchikan	225-6420 or 225-6440
Kodiak	486-4178
Kotzebue	442-3398 or 442-3498
Nome	443-2961 or 443-2952
Unalaska	581-1025

5. If you need a lawyer but don't qualify for Alaska Legal Services, see the low-cost legal clinics in your town or call the statewide Lawyer Referral Service at 272-0352 in Anchorage. They may be able to refer you to a lawyer in your area.

6. For complaints against state government officials or agencies, contact the State Ombudsman Office:

Anchorage:
3201 "C", Room 608
Anchorage, AK 99503
583-3673

Fairbanks
315 Barnette Street
P.O. Box 74388
Fairbanks, AK 99707
452-4001

Juneau
525 Village Street
Pouch WD
Juneau, AK 99811
485-4970

7. For complaints against Municipality of Anchorage employees or departments, contact the Municipal Ombudsman Office at 284-4461.

8. To file a claim for damages of \$2,000 or less, see the Clerk or magistrate at your local courthouse and ask for their publication, "Alaska Small Claims Handbook."

9. For complaints against federal housing projects, call HUD (Housing and Urban Development) at 271-4343.

10. For complaints against state housing projects, call your project manager or ASHA (Alaska State Housing Authority) Central Office at 562-2813.

11. For information on and filing discrimination complaints contact the Anchorage Equal Rights Commission, 820 E. 10th, Anchorage, AK 99501, phone: 284-4342 or the Equal Rights Commission in your town.

12. Some cities/towns in Alaska have tenants' unions, tenant advocacy organizations, landlord associations and similar groups that might help you. Check your local phone book for groups in your town.

Forms and notices

The following notices were prepared as samples of what is necessary. These samples may not apply in all situations but could be helpful.

**LANDLORD NOTICE TO TENANT OF TERMINATION OF TENANCY
(NOTICE TO QUIT)**

TO _____ (Date) _____
 _____ (Tenant)
 _____ (Address)

You are notified that your tenancy is terminated and that you must move from the address listed above on the rent due date which occurs at least 30 days from the date you receive this notice. Your rent is due on the _____ day of _____, 19____, so you must be gone by the _____ day of _____.

The reason you are being evicted is as follows: _____

If you are not gone by that date, a lawsuit will be filed to evict you.

Signed _____ (Landlord)

Receipt
 I received this notice on the _____ day of _____, 19____, at _____ (Tenant)

KEEP A COPY OF THIS NOTICE

**LANDLORD NOTICE TO TENANT OF EVICTION
FOR VIOLATION OF AGREEMENT AND/OR THE LAW**

(Date)

TO

(Tenant)

(Address)

You are notified that you have seriously violated your agreement with me and/or your duties under the law. The violation(s) is (are) set out specifically as follows:

If you do not remedy the violation(s) listed above within **TEN DAYS** after the date you receive this notice, your tenancy will terminate in not less than **TWENTY DAYS** from the date you receive this notice, and you must move. Failure to remedy the violation(s) listed above will mean you must move out by the ____ day of _____, 19__.

If you have not remedied the problem(s) and have not moved by the date listed above, a lawsuit will be filed to evict you. If you remedy the problem(s) within **TEN DAYS** you may stay.

Signed,

(Landlord)

Receipt

I received this notice on the ____ day of _____, 19__ at _____

(Tenant)

KEEP A COPY OF THIS NOTICE

TENANT NOTICE TO LANDLORD OF DEFECTS IN ESSENTIAL SERVICES

(Date)

TO

(Landlord)

(Address)

You are notified that you are failing to provide (water/hot water/heat/sewer service or other essential services) at the above address. The specific defect(s) is (are) as follows:

If you do not fix this defect **WITHIN 24 HOURS**, I have a right to:

- 1) have it fixed myself and deduct the cost from my rent
- 2) sue you for damages, or
- 3) move out, stop paying rent, and hold you responsible for my expenses of moving.

Signed,

(Tenant)

Receipt

I received this notice on the ____ day of _____, 19__ at _____

(Landlord)

KEEP A COPY OF THIS NOTICE

LANDLORD NOTICE TO TENANT OF EVICTION
FOR NON-PAYMENT OF RENT

(Date)
TO _____
(Tenant)

(Address)

You are notified that you owe rent in the amount of \$ _____.
If you do not pay this rent within TEN DAYS of the day you receive this notice, your
tenancy is terminated and you must move. You MUST pay your rent in cash, money
order or certified check.

If you have not paid the rent or moved within TEN DAYS, a lawsuit will be filed to evict
you. If you deliver your rent to me on or before the TEN DAY period, you may stay.

Signed,

(Landlord)

Receipt:

I received this notice on the _____ day of _____, 19____ at _____
am/pm

(Tenant)

KEEP A COPY OF THIS NOTICE

TENANT NOTICE TO LANDLORD OF TERMINATION OF TENANCY
(BY TENANT)

(Date)
TO _____
(Landlord)

(Address)

You are notified that I am terminating this tenancy effective on the rent due date which
occurs at least 30 days from the date you receive this notice. My rent is due on the
_____ of each month, so I will be gone by the _____ day of
_____, 19____.

Please send my security deposit of \$ _____, or an explanation
of how it was used, to my new address _____.

(New address)

I understand that, by law, my deposit must be returned within 14 days of the date I move.

Signed,

(Tenant)

Receipt:

I received this notice on the _____ day of _____, 19____ at _____
am/pm

(Landlord's Signature)

KEEP A COPY OF THIS NOTICE

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For copies of this publication,
see the Consumer Protection
Section, Alaska Department of
Law:

Anchorage:

1031 W. 4th, Suite 300
Anchorage, AK 99501
279-0428

Fairbanks:

1st National Center
100 Cushman, Suite 400
Fairbanks, AK 99701
456-8588

Juneau:

Pouch K. State Capital
(S.S. Fuller Bldg.,
Suite 214
4th & Harris)
485-3692

GREGORY FRANK COOK

ATTORNEY AT LAW

P.O. Box 618, Douglas, Alaska 99824

(907) 586-9719

Admitted to Practice in Alaska and Oregon

Representative Dave Donley
P. O. Box "V"
Juneau, Alaska 99811

February 12, 1990

Dear Representative Donley

This office represents Mr. Myron Klein, of Juneau.

The purpose of this letter is to share with you Mr. Klein's opinions and suggestions regarding HB 309, "An Act relating to the landlord tenant relationship... ."

Mr. Klein SUPPORTS HB 309 and urges you to pass HB 309 in this Session. This Bill would improve the current state of landlord-tenant law, including eviction cases (known as "F.E.D.," or "Forcible Entry and Detainer") in several important ways.

I have performed a sectional analysis of HB 309 to demonstrate the benefits this Bill should have and to highlight areas where the Bill could be improved.

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No Comment.

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Comment: Shortening this time period will, for non-agricultural cases, help expedite the judicial proceedings in F.E.D. actions. It is a good reform.

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No Comment.

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Comment: Section 7 could benefit from re-drafting the first sentence to read: "No tenant acquires rights under this chapter unless that person has paid rent in full for the first rental period specified in a written rental agreement." This additional change is desirable to avoid the problems that are involved when one party or another claims that an oral rental agreement was made.

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Comment: This section increases the freedom of the landlord and tenant to arrive at mutually acceptable terms in a lease. This section recognizes that in some circumstances, a more substantial security deposit may be desirable. If the parties so agree, they may contract to that effect.

*Section 9: This section specifies the address for a landlord to use to return a tenant's security deposit. It also places the responsibility on the tenant to tell the landlord where to send his security deposit within 90 days of the termination of the tenancy, or forfeit to the landlord the amount of security deposit not applied to damage to the rental unit or to unpaid rent.

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Comment: Many Alaskans are handier than they are wealthy. This gives a handyman-tenant the chance to bargain for reduced rent in exchange for limited maintenance duties. This provision stands to benefit everyone.

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No comment.

*Section 12: This section adds a "rule of reasonableness" to the requirement that a landlord must give a tenant at least 24 hours' advance notice of his intent to enter the premises for purposes permitted under existing law.

Comment: When a tenant is out of town it may be impossible to provide the 24 hour's notice now required. This change recognizes that sometimes notice is just not possible.

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Comment: This section would primarily benefit tenants and lending institutions, while at the same time simplifying what might otherwise be a very complicated situation. It is a good reform.

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Comment: In Alaska, a cut-off of heat can have potentially disastrous impacts on a home or apartment. Repair costs can be extraordinary. This section permits a landlord to terminate a tenant's tenancy when the tenant fails to keep the utilities bills paid, thereby endangering the unit. This is an important and good reform.

*Section 15: This section specifies that a tenant must pay rent in full in order to remain in occupancy unless the landlord accepts a partial payment of the rent.

Comment: This section should be clarified to state that a landlord does not need to make an "all or nothing" choice if a tenant offers to make a partial payment of rent. The following language should be added to this section:

"A landlord may accept partial payment of rent from a tenant while specifically reserving his right to terminate the tenancy if within three days of the partial rental payment the landlord gives the tenant written notice that the partial rental payment does not constitute compliance with he rental agreement."

Comment: (Section 15, continued) In Juneau, the District Court has, in some cases, been unwilling to evict tenants who pay part of their rent, but not all of their rent. The Court appears to have adopted an unwritten rule that an unspecified amount of rent can be withheld by a tenant before the Court will grant an eviction for failure to pay rent.

To remedy this problem, the Legislature should further specify, perhaps in a Letter of Intent, that:

"The remedy of eviction is intended to be available as a matter of law, according to the procedures set out in AS 09.45 and AS 34.03, as against tenants who do not pay the full amount of rent due, regardless of the amount of the deficiency."

*Section 16: This section specifies certain conditions under which the landlord may enter a tenant's rental unit and terminate the tenancy.

No comment.

*Section 17: This section (and the following three sections) partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. It specifies that an automobile is included within the ambit of a tenant's personal property. It requires a tenant to make a written request of the landlord regarding property the tenant leaves behind if the tenant wants to prevent the landlord from selling the property at public auction. The tenant must be given 15 days' written notice before any sale or other disposition of property left behind. It specifies that a tenant's perishable commodities left behind must first be determined to be of minimal value before a landlord may dispose of them in a manner left to his discretion.

Comment: Tenants' property rights are given additional protection in this section whenever persihable commodities are involved.

*Section 18: Like section 17, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section limits the landlord's duties (the law of "bailment") when the landlord stores property left behind by a tenant. This section also limits the amount a landlord may charge for such storage.

No comment.

Section 19: Like sections 17 and 18, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section revises the tenant's duties when he receives a written notice from the landlord of the landlord's intent to dispose of property the tenant has left behind after the tenancy has ended.

No comment.

*Section 20. Like sections 17-19, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section specifies that the landlord is not liable for damages to a tenant when the landlord stores the tenant's property after the end of the tenant's term of occupancy unless the landlord deliberately or negligently violates the law's requirements.

No comment.

*Section 21: This section adds a new provision of law covering hold-over tenancies under a deed of trust executed by a landlord.

No comment.

*Section 22: This section allows a landlord to ask a utility to notify the landlord in the event of a cut-off of service by the utility to a rental unit.

Comment: This section complements section 14, above.

*Section 23: This section deletes the requirement that the State of Alaska's publication on landlord and tenant rights be approved by the Department of Law.

No comment:

*Section 24: This section seeks to amend Civil Rule 85 (a) (3) regarding continuances.

p. 7
Comments on HB 309

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

*Section 25: This section seeks to amend Civil Rule 85 regarding calendaring priority.

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

*Section 26: This section seeks to amend Civil Rule 8 for District Courts regarding Small Claims procedure

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

Section 27: This section directs the Legislative Affairs Agency to make copies of the Landlord-Tenant Law pamphlet available to the public.

Comment: In the past, this informational pamphlet has appeared slanted towards the perspective of tenants. It is hoped that this pamphlet can be revised to more evenly reflect the interests of landlords and tenants.

CONCLUSION

HB 309 is a good bill. I urge you to vote in favor of this legislation. Please also consider the addition suggested in our comments to Section 15, set out on page 5 of this letter.

Thank you for considering these views. Please contact me if you have specific questions regarding changes to this Bill.

Sincerely,



Gregory F. Cook
Attorney for
Myron Klein

Alaska State Legislature
House of Representatives

February 26, 1990

Labor and Commerce Committee

M E M O R A N D U M

To: Dick Bradley, Counsel
Legislative Legal Services

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Bill drafting request - CS HB 309 (L&C)

Please prepare a draft House Labor and Commerce CS for HB 309, working from the 1/29/89, WO 6-084J draft CS, incorporating the following changes:

Section 1 and 2 - Leave Section 1 (giving landlord/tenant cases priority in court) and Section 2 (technical amendment) as is.

Section 3 - (Period between service and notice of action brought) Leave the 10 day standard on page 2, line 2 as it is in current law. Change the three day standard in line five to five days.

Section 4 - (Time periods and surety deposits for summons and continuance) Delete everything after the first sentence.

Section 5 - (Technical amendment to current law to comply to changes that are no longer proposed under this draft). Delete entire section.

Section 6 - (Authorizing landlord/tenant cases to be heard in small claims court). Leave as is.

Section 7 - (Persons who do not pay full rent do not acquire rights under this chapter). Redraft this section to require that a person who does not pay the whole rent for the first full rental period is subject to eviction on 24 hours notice.

Section 8 - (Allowing a landlord to charge three (TWO) times the monthly rent as a security deposit). Redraft section to remove the restriction on security deposits for rental units in excess of \$1,000 a month.

Section 9 - (Requiring tenants to give a forwarding address to landlords for return of security deposits) Leave as is.

Section 10 - (Expanding the scope of landlord duties a tenant can agree to perform). Leave as is in current law but add a new section allowing tenants to agree to perform landlord's duties for (a) (3) (heating and plumbing systems) as

well as duties allowed under current law for rental units in excess of \$1,000 a month. Leave prohibition against elevator maintenance.

Section 11 - (Removal of landlords property from rental premises) Clarify that landlord cannot remove property required by the Act (furnace, plumbing fixtures, etc.) or by a written rental agreement.

Section 12 - (Circumstances under which a landlord can enter rental unit) Delete section.

Section 13 - (Establishing that tenants debt to landlord is satisfied when they pay rent to the new owner when rental property changes ownership). Leave as is.

Section 14 - (Tenant cannot bring claim of deficiencies in rental unit during eviction proceedings unless they had notified landlord prior to proceedings) Rewrite section to clarify that if tenants with held rent based on provisions under the Act, they must notify the landlord in writing specifying the acts and omissions constituting a breach under the Act in order to use it in court.

Section 15 - (Eviction for failure to pay utility bills) Rewrite section so that shorter notice time does not apply if 1) tenant recontinues service within three days, 2) repays any amount paid by landlord, and 3) no damage occurred to the rental unit as a result of the tenants failure to pay utility bills. If those any of those conditions are not met, the landlord may terminate the tenancy five (THREE) days after delivery of the notice.

Section 16 - (Acceptance of partial rental payment) Leave as is.

Section 17 - (Time periods when landlord may reenter the rental unit and terminate the agreement when rent has not been paid and tenant is absent). Leave as is.

Sections 18, 19, and 20 (Repeals and reenacts sections dealing with removal, storage, and disposition of tenants property). Delete sections.

Section 21 - (Technical amendments to section of current law dealing with liability for tenants property to make it easier to understand). Leave as is.

Section 22 - (Continuing the terms of a lease when executing a deed of trust) Leave as is.

Section 23 - (Rights of landlords to receive notice of discontinuance of utility service). Leave as is.

Section 24 - (Review of landlord/tenant pamphlet by Department of Law) Delete section.

Section 25 - (Required continuance deposits) Delete section.

Section 26 - (Change civil rule 85 to give priority to landlord/tenant claims on court calendar) Leave as is.

Section 27 - (Change civil rule 8 to allow landlord/tenant claims to be heard in small claims court). Leave as is.

Section 28 - (Require LIO's to make copies of landlord/tenant pamphlet available to the public). Leave as is.

HB 309 is before the House Labor and Commerce on Thursday, March 1, at 3:00 p.m., assuming you can get a working draft to us by that time. Please call me or Ginger Baim at 4954 if you have any questions or need additional information.

dd/gbs90
b/hb309-1

Alaska State Legislature

HOUSE OF REPRESENTATIVES



REPRESENTATIVE FRAN ULMER

M E M O R A N D U M

February 23, 1990

TO: Rep. Dave Donley, Chair
House Labor and Commerce Committee

FROM: Fran Ulmer

RE: HB 309, relating to the landlord/tenant relationship

.....

Attached you will find a copy of some very informative comments I received recently in regard to HB 309, relating to the landlord/tenant relationship. Since the bill is a fairly complex one, I thought the committee would appreciate these as I did. The author of the comments approved the distribution of his remarks.

attachment
cc: L&C members

FU/dl

GREGORY FRANK COOK

ATTORNEY AT LAW

P.O. Box 618, Douglas, Alaska 99824

(907) 586-9719

Admitted to Practice in Alaska and Oregon

Representative Fran Ulmer
P. O. Box "V"
Juneau, Alaska 99811

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To remedy this problem, the Legislature should further specify, perhaps in a Letter of Intent, that:

"The remedy of eviction is intended to be available as a matter of law, according to the procedures set out in AS 09.45 and AS 34.03, as against tenants who do not pay the full amount of rent due, regardless of the amount of the deficiency."

*Section 16: This section specifies certain conditions under which the landlord may enter a tenant's rental unit and terminate the tenancy.

No comment.

*Section 17: This section (and the following three sections) partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. It specifies that an automobile is included within the ambit of a tenant's personal property. It requires a tenant to make a written request of the landlord regarding property the tenant leaves behind if the tenant wants to prevent the landlord from selling the property at public auction. The tenant must be given 15 days' written notice before any sale or other disposition of property left behind. It specifies that a tenant's perishable commodities left behind must first be determined to be of minimal value before a landlord may dispose of them in a manner left to his discretion.

Comment: Tenants' property rights are given additional protection in this section whenever perishable commodities are involved.

*Section 18: Like section 17, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section limits the landlord's duties (the law of "bailment") when the landlord stores property left behind by a tenant. This section also limits the amount a landlord may charge for such storage.

No comment.

Section 19: Like sections 17 and 18, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section revises the tenant's duties when he receives a written notice from the landlord of the landlord's intent to dispose of property the tenant has left behind after the tenancy has ended.

No comment.

*Section 20. Like sections 17-19, this section partially repeals existing law regarding when a landlord may dispose of a tenant's property that has been abandoned on the rental premises. This section specifies that the landlord is not liable for damages to a tenant when the landlord stores the tenant's property after the end of the tenant's term of occupancy unless the landlord deliberately or negligently violates the law's requirements.

No comment.

*Section 21: This section adds a new provision of law covering hold-over tenancies under a deed of trust executed by a landlord.

No comment.

*Section 22: This section allows a landlord to ask a utility to notify the landlord in the event of a cut-off of service by the utility to a rental unit.

Comment: This section complements section 14, above.

*Section 23: This section deletes the requirement that the State of Alaska's publication on landlord and tenant rights be approved by the Department of Law.

No comment:

*Section 24: This section seeks to amend Civil Rule 85 (a) (3) regarding continuances.

p. 7
Comments on HB 309

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

*Section 25: This section seeks to amend Civil Rule 85 regarding calendaring priority.

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

*Section 26: This section seeks to amend Civil Rule 8 for District Courts regarding Small Claims procedure

Comment: Procedural rules of court are under the exclusive authority of the judicial branch and are set by the Alaska Supreme Court.

Section 27: This section directs the Legislative Affairs Agency to make copies of the Landlord-Tenant Law pamphlet available to the public.

Comment: In the past, this informational pamphlet has appeared slanted towards the perspective of tenants. It is hoped that this pamphlet can be revised to more evenly reflect the interests of landlords and tenants.

CONCLUSION

HB 309 is a good bill. I urge you to vote in favor of this legislation. Please also consider the addition suggested in our comments to Section 15, set out on page 5 of this letter.

Thank you for considering these views. Please contact me if you have specific questions regarding changes to this Bill.

Sincerely,



Gregory F. Cook
Attorney for
Myron Klein

HB309



Institute of Real Estate Management
of the NATIONAL ASSOCIATION OF REALTORS®

Alaska Chapter No. 97

February 22, 1990

Representative Dave Donley
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Alaska 99811

Representative Donley:

This letter is being written in reference to House Bill No. 309 and House Bill No. 354 both by the House Labor and Commerce Committee. We are desirous of seeing them both enacted.

House Bill 309 an Act relating to Landlord Tenant relationships.

The Landlord Tenant Act was enacted during pipeline days when housing was nearly impossible to obtain and what there was had some atrocious rents attached it to. The most blatant example printed in the papers was in Valdez.

Senator Ziegler of Ketchikan held hearings in the major cities and he stated more than once that the Bill was being pushed through on a surge of emotion and that it would have to be looked at a later date in a more reasonable atmosphere.

We believe that time is now and House Bill 309 will amend the Act to bring it into the realm of fairness. The relationship between the Owners and 90% of the renters is excellent. It is the other 10 percent that have learned how to use the Landlord Tenant Act to prolng their tenancy without payment of rent or payment for the damage that they cause to the premises.

We know that you believe in fairness and therefore request your whole-hearted support of House Bill 309 when it is before you.

House Bill No. 354

This Bill authored by the House Labor and Commerce Committee allows local governments to have options of forgiving taxes for up to a five year period in order to induce owners to remove old buildings or sheds. This is a tool which the local municipalities may rid themselves of blight in the lease painless and least expensive way. We urge your support of this Bill.

CERTIFIED PROPERTY MANAGER®



ACCREDITED MANAGEMENT ORGANIZATION®



ALASKA TRAILER COURT ASSOCIATION

Denali Tower North
2550 Denali Street Suite 1608
Anchorage, Alaska 99503
907 / 278-3615

March 6, 1990

TO ALL MEMBERS
Labor & Commerce Committee
Alaska State Legislature
Post Office Box 4
Juneau, Alaska 99811

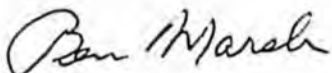
Re: HB 309

Dear Committee Member

This is to express support for HB 309, for which a Committee Substitute may be reported out of Labor & Commerce Committee. Alaska Trailer Court Association has considered the original version and registered support.

ATCA is affiliated with Alaska Landlords and Property Managers Association, which also strongly supports this bill. Both groups have extensive experience with the working of the Landlord-Tenant Act, and HB 309 is designed to correct some awkward and difficult features of the Act. Keep in mind that HB 309 creates absolutely no hardship for a tenant that pays the rent.

Sincerely,



Bernard L. Marsh, Executive Secretary
Alaska Trailer Court Association

BLM:aem

cc: Alice Brewer, Executive Secretary
ALPMA

STATE OF ALASKA
THE LEGISLATURE

HOUSE OF REPRESENTATIVES
LEGISLATIVE COUNSEL
207 465 1000

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 19, 1989

SUBJECT: Landlord and tenant, etc.
(Work Order No. 6-0846A)

TO: Representative Dave Donley

FROM: Richard A. Bradley *RB*
Legislative Counsel

I have been working with Michael Ward on the landlord and tenant bill that you have requested.

One of the questions that has arisen during the consideration of the bill has been the meaning of AS 34.20.090(b). Sec. 21 of the 4/3/89 draft seeks to clarify the understandings of what is meant by the section.

The provision provides:

(b) The purchaser at a sale and the heirs and assigns of the purchaser are, after the execution of a deed to the purchaser by the trustee, entitled to the possession of the premises described in the deed as against the party executing the deed of trust or any other person claiming by, through or under that party, after recording the deed of trust in the recording district where the property is located. [Emphasis added.]

The question arose whether a lessee was protected on the foreclosure of the deed of trust. In my view the answer was yes since I would have interpreted the phrase in AS 34.20.090 that provides that the purchaser of the property at the foreclosure sale is "entitled to the possession of the premises described in the deed as against the party executing the deed of trust or any other person claiming by, through or under that party" [AS 34.20.090(b)] as protecting the lessee.

A recent Alaska Supreme Court opinion disagrees. The court analyzed the question in Interior Energy Corporation v.

Representative Dave Donley
Page 2
April 19, 1989

Alaska Statebank, P.2d (No. 3424, April 14, 1989). [Copy enclosed.]

The court gives no particular attention to the possible variety of meanings that the section might have, simply stating that AS 34.20.090(b) "provides that a purchaser of property at a foreclosure sale is entitled to possession of the property as against the party who executed the deed of trust or any person claiming by, through or under that party. The logical effect of this right of possession, at least where the purchaser chooses to exercise his right, is to extinguish the existing leasehold interest." At page 14 of the slip opinion.

The court fails to acknowledge the distinction between those who "claim by, through, or under the party"-- as heirs or grantees-- and those whose claims are in a sense adverse to the party even though also "by, through, or under the party"-- as a lessee under a 50 year lease. There is business logic to extinguish the former and none to extinguish the latter, assuming that the lessee is up to date on its obligations.

Nonetheless, the amendment in Sec. 21 is now not so much a clarification of ambiguous rights as a necessary protection to lessee rights, if that is your goal.

One other point that is extraneous to the comments above. In Sec. 23 of the bill, the material after "tenant rights" on line 8 through "publication" on line 10 is logically redundant to what precedes it and I would like to repeal it in any further revision of the bill.

If I may be of further assistance, please advise.

RB:kb
wkk4/026

Enclosure

STATE OF ALASKA
THE LEGISLATURE


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 23, 1989

SUBJECT: Landlord and tenant
(Work Order No. 6-0846)

TO: Representative Dave Doniey

FROM: Richard A. Bradley 
Legislative Counsel

Michael Ward has requested a revision of the draft.

Several brief observations might be in order.

In the amendment to AS 34.03.100(c), you asked that the provision be amended to prevent the assumption by the tenant of maintenance of elevators. I have added such a provision. Note, however, that the agreement by the tenant is only appropriate (under AS 34.03.100(c)) if the agreement occurs within a "one- or two- family residence". Not too many of those will have elevators.

I have added "when possible" to the provisions of AS 34.03.140(c). The amendment is probably unnecessary since the existing language of the section provides an escape "in case of emergency or if it is impractical" to provide the notice.

Regarding the amendment to AS 34.03.230(b), I am concerned that "presumptions" cloud the situation. Please review my language; I believe I have achieved your goal.

I have added "water" in the two places requested, the amendment to AS 34.03.220(a) and Sec. 42.30.400. The alternative to the increasing list is simply to deal generically with services from public utilities.

Finally, you requested a possible amendment that would deal with the situation where the landlord of rented premises has defaulted to the mortgagee bank and disappears from the scene; the tenant is unaware of the identity of the bank and uncertain of his responsibilities. While these relation-

Representative Dave Donley
Page 2
March 23, 1989

ships may be complicated because of the varying patterns possible, I suggest:

"* Sec. . AS 34.03 is amended by adding a new section to Article 5 to read:

Sec. 34.03.155. ADDITIONAL TENANT OBLIGATIONS. If a landlord defaults on a financial obligation that secures property occupied by a tenant of the landlord, the holder of the financial obligation may advise the tenant of the landlord to make payments otherwise due to the landlord directly to the holder of the financial obligation for the benefit of the landlord and holder.

If I may be of further assistance, please advise.

RAB:gc
WKG8/061

STATE OF ALASKA
DEPARTMENT OF LAW
OFFICE OF ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

March 17, 1989

APPLY TO
1031 W 4th SUITE 110
ANCHORAGE ALASKA 99501
PHONE (907) 263-0478
276-3550
1st NATIONAL CENTER
100 CUSHMAN SUITE 400
FAIRBANKS ALASKA 99701
PHONE (907) 458-8588
S.S. FULLER BLDG
4th & HARRIS SUITE 210
PO BOX 8
JUNEAU ALASKA 99811
PHONE (907) 485-3892
STATE COURTHOUSE ROOM 20
PO BOX 871
VALDEZ ALASKA 99680
PHONE (907) 825-2442

Honorable Dave Donley
Chairman, Committee on Labor and Commerce
House of Representatives
Pouch V
Juneau, Alaska 99811

Re: Proposed amendments to landlord-tenant laws

Dear Representative Donley:

Thank you for providing the opportunity to comment on proposed amendments to the landlord-tenant law at last week's committee work session. As you requested, I am supplementing my oral comments with this letter.

In the course of hearing complaints and inquiries to the Consumer Protection Section from numerous landlords and tenants, and in the course of preparing to revise the section's booklet explaining Alaska's landlord-tenant law (a copy of which is enclosed for your reference), we have identified several issues that might benefit from legislative clarification. Consequently, if your committee does decide to proceed with amendments to the relevant landlord-tenant laws, it might wish to consider including additional amendments that would address these issues.

1. Problems Relating to the Landlord's Default under a Mortgage (Deed of Trust)

Typically, deeds of trust give the lender the right to collect rents upon the borrower's default, and in the current real estate market many tenants find themselves facing demands for payment of rent to the lender. Unfortunately, in some cases the landlord also continues to demand payment of rent, threatening eviction if it is paid to anyone but the landlord. This of course places the tenant in a very uncomfortable position, because if the tenant pays a person who is not legally entitled to collect the rents, the tenant will still owe the rent to the other party. Tenants usually are not in a position to hire an attorney to get legal advice in such situations.

One possible remedy would be to provide for an informal sort of "interpleader" procedure in small claims court, whereby a tenant faced with conflicting demands for payment of rent could pay the rent into the court registry and notify the other

parties, who would then be left to fight it out between themselves. Such payment would be a defense to an eviction action for nonpayment of rent.

Another problem frequently encountered by tenants in today's market occurs when the property has gone through a foreclosure sale. Often the purchaser (generally speaking the lender) wants the property to be vacated and will sometimes give the tenant only 10 days notice to vacate, presumably in accordance with AS 09.45.110 or 09.45.130. In the usual case of a month-to-month tenancy, although AS 09.45.130 will prevent an eviction action during the month for which rent has been paid in advance, the lenders apparently take the position that the tenant's rights in the property have been extinguished by the foreclosure sale, and that pursuant to AS 34.20.090(b) the lender is "entitled to the possession of the premises described in the deed as against . . . any other person [such as a tenant] claiming by, through or under [the party executing the deed of trust]."

I am not aware of Alaska case law deciding whether a month-to-month tenant continues to have the right to a 30-day notice even after foreclosure. In some states with "anti-eviction statutes" that essentially prohibit termination of tenancies except for cause, courts have held that tenants' rights thereunder continue in effect even after foreclosure; in other states the opposite rule is recognized.

One way to clarify the law in Alaska would be to provide by statute that the notice requirement for terminating a periodic tenancy remains in effect even after foreclosure of the landlord's interest.

2. Abandoned Property

AS 34.03.260 (both in its current form and under the proposed amendments) provides for public sale of certain abandoned property. However, the statute does not expressly state what the landlord should or may do with the proceeds of the sale. AS 34.03.260(e) incorporates the notice provision of the statute governing execution sales, and by analogy to such sales the tenant would presumably be entitled to any surplus over the landlord's costs. However, execution sales are not a wholly comparable situation because of the role of the court, service of process, and so on. Moreover, what if the landlord attempts to pay the surplus to the tenant but the tenant cannot be located? The surplus funds in that situation might be considered unclaimed intangible property under AS 34.45.110, in which case the

landlord would apparently have to pay it to the Department of Revenue after five years.

Because of the uncertainty surrounding the landlord's obligation in this area, legislative clarification might be helpful.

3. Late Charges

The current act does not address the question of late charges, but some landlords do assess such charges, sometimes at a very substantial rate. In a 1985 general business advisory, not directed at residential tenancies, our office has previously cautioned that late charges might be considered interest subject to the usury laws, but to our knowledge this issue has not been decided by the courts. Nor is it clear whether late charges of any amount are permissible under the landlord-tenant act, although no express prohibition appears in the act. To clarify this issue the legislature could provide either that no late charges may be assessed or that late charges up to a certain reasonable amount (e.g., four or five percent of the late rental payment) may be assessed if the rental agreement so provides in writing.

4. Security Deposits

Our office has received complaints from tenants that security deposits have disappeared when the landlord abandons the property or the property is foreclosed upon. Although AS 24.03.070(d) allows an aggrieved tenant to recover twice the amount of the security deposit in such cases of willful failure to return the deposit, this remedy is more academic than practical when a landlord either has no money left or is gone. The only practical protection I know would be a requirement that security deposits either be held in a bona fide escrow or placed in a bank account that requires the signature of both landlord and tenant to withdraw funds.

Another issue concerns interest on security deposits. Although the current act does not address this issue, general trust law principles would suggest that if a landlord earns interest on a tenant's security deposit, the tenant is entitled to that interest. An amendment explicitly establishing, or negating, the landlord's obligation regarding interest could serve to clarify the law in this area.

In addition to the above issues, I should also mention what appears to be an inconsistency that could result from the

Honorable Dave Donley

March 17, 1989

Page 4

proposed bill. Section 4 of the proposed bill would amend AS 09.45.110 to reduce from 10 days to five days the period between service of a notice to quit and commencement of an action to recover possession. I gather from listening to the testimony at the work session that this change was intended to enable landlords to begin eviction procedures for nonpayment of rent in a shorter period of time than is currently allowed. However, AS 34.03.220(b) still requires a notice period of 10 days in such cases, as does AS 09.45.090(1).

I hope this information is helpful.

Sincerely,

DOUGLAS E. BAILY
ATTORNEY GENERAL

By:


Robert E. Mintz
Assistant Attorney General

REM/ssr
Encl.

ALASKA LANDLORD — TENANT LAW

December 1983
2nd Revision

Cooperative Extension Service
University of Alaska

and

State of Alaska
Department of Law

This booklet is a revision of P-98 "Alaska's Landlord-Tenant Law" originally prepared by Alaska Legal Services with the Cooperative Extension Service in 1974. Revised editions were prepared in 1975 and 1980.

The 1983 revision was prepared with the assistance of Alaska Legal Services, the Alaska Law Library, the Consumer Protection Section of the Alaska Department of Law, the Alaska Court System, and private attorneys. This booklet has been approved and printed by the Consumer Protection Section of the Alaska Department of Law, as required in Alaska Statutes 44.23.020. The most recent revision (referred to as 2nd Revision) was completed in October by 1985.

In addition to the revisions noted above, a supplement was prepared in August of 1985 to address previously unanswered issues of concern to both landlords and tenants. These issues are described in the booklet as the subjects of Attorney General research and the supplement represents the product of that research.

INTRODUCTION

This booklet was prepared directly from AS 34.03.010-360. Where appropriate, the actual portion of the law that pertains is cited so that if you need to go to court, you can either use this booklet or can refer directly back to the law. The reference will be the letters "AS" (short for Alaska Statute) followed by some numbers (these are the title, chapter and article numbers of the law, respectively). For example, AS 34.03.330. You can get a copy of the actual law at your nearest courthouse, public library or magistrate's office.

In this booklet, several terms are used that mean the same thing:

LANDLORD means the owner or manager or rental agent for the dwelling.

DWELLING UNIT, PROPERTY and **PREMISES** means the rental unit, whether it is a home, apartment, mobile home, mobile home park space, etc.

TENANT means any of the people who rent a dwelling.

PRE-PAID RENT is the amount of money paid at the beginning of the agreement to insure that rent will be paid but does not include deposits or first month's rent.

Other definitions may be found in AS 34.03.360.



INTRODUCTION

This pamphlet is a supplement to the December, 1981 revised edition of "Alaska Landlord-Tenant Law," which was published jointly by the Cooperative Extension Service, University of Alaska, and the State of Alaska, Department of Law.

The 1983 edition of the pamphlet noted that the Attorney General's office was researching the legality of several practices of some landlords which were considered to be questionable. This supplement has been prepared to address the legality of those landlord practices.

This supplement has been approved and printed by the Consumer Protection Section of the Alaska Department of Law, as authorized by AS 44.23.020.

The specific practices and the Attorney General's conclusions discussed in this supplement include the following:

A. A landlord's policy that the tenant's security deposit is forfeited to the landlord, regardless of the condition of the unit, if the tenant terminates the rental agreement in less than a certain period of time. **THIS PRACTICE IS UNLAWFUL.**

B. A landlord's policy requirement that prospective tenants pay an "application fee" which becomes the security deposit if the prospective tenant actually occupies the dwelling unit; however, the "application fee" is forfeited to the landlord if, for any reason, the prospective tenant decides not to rent the dwelling unit when it is offered. **THIS PRACTICE IS UNLAWFUL.**

C. A fee charged to tenants, at the beginning of the rental agreement, as a non-refundable cleaning fee or similarly denominated fee, in addition to a security deposit and prepaid rent, which is not refunded to the tenant even if the tenant thoroughly cleans the unit. **THIS PRACTICE IS UNLAWFUL.**

D. A fee charged to prospective tenants as a non-refundable "application fee" to cover the actual, reasonable cost of checking the tenant's credit history and otherwise processing the application. **THIS PRACTICE IS PROBABLY LAWFUL.**

E. A landlord's gaining possession of a dwelling unit by changing the locks, and holding or removing the

landlord claims the right to do this pursuant to a waiver contained in an agreement signed by the tenant, to pay overdue rent or vacate the premises by a certain date. **THESE PRACTICES, WITH OR WITHOUT THE TENANT'S WAIVER, ARE UNLAWFUL.**

DEPOSITS AND OTHER FEES PAID AT THE COMMENCEMENT OF A LEASE

The Uniform Residential Landlord and Tenant Act, AS 34.03.010 - .380, contains a number of provisions regarding security deposits. These provisions limit the amount of deposit that a landlord may legally require at the beginning of a tenancy, limit the landlord's right to retain the deposit, and require the landlord to take actions to minimize (mitigate) damages when the tenant fails to abide by the terms of an agreement.

Specifically, the law states:

1. The total amount collected for security deposit and prepaid rent (other than the first month's rent) cannot exceed two months rent (AS 34.03.070).

2. The landlord cannot withhold the security deposit to cover repair of wear resulting from "ordinary use" of the premises (AS 34.03.070).

3. In all cases, the landlord has an affirmative duty to mitigate the landlord's damages resulting from a tenant's breach (AS 34.03.110).

4. Whenever a tenant abandons a dwelling unit, the landlord must make a reasonable effort to re-rent the dwelling unit, as soon as possible, at the fair market value (AS 34.03.110).

A number of the practices listed above should be analyzed according to these provisions.

A. Automatic Forfeiture of Security Deposit

As noted in the December 1981 revision of this pamphlet (page 9), some landlords have adopted a policy that unless the tenant stays in a unit for a certain time period (6 months, for example), the tenant automatically forfeits all or a specific portion of the security deposit.

This practice is unlawful. The Act allows landlords to retain and apply security deposits to accrued back rent and to damages suffered because of a tenant's failure to comply with AS 34.03.110 (which requires the tenant to keep the unit clean and to use the unit reasonably). The Act also requires landlords to mitigate

requires landlords to re-rent the dwelling, at fair rental value, as soon as possible after the tenant abandons the unit.

A provision that the tenant automatically forfeits the security deposit if the tenant stays in the unit less than a certain period is contrary to the landlord's legal duty to mitigate damages and re-rent the unit as soon as possible, and contrary to the statutory provision that the security deposit can be withheld only to cover accrued rent and damages. Any such provision in a rental agreement is thus unenforceable under the Act (AS 34.03.040).

It should be emphasized that such a policy is unlawful whether or not it is expressly disclosed to the tenant. Such a policy is simply contrary to the Act, and unlawful, even if it is disclosed to and agreed to by the tenant.

B. Forfeiture of "Application Fee"

Another practice quite similar to the one just discussed involves an "application fee" which the prospective tenant must pay to a landlord when seeking an apartment, which fee then becomes the security deposit if the prospective tenant actually occupies the dwelling unit, but which fee is forfeited to the landlord if the prospective tenant does not occupy the unit when it actually becomes available and is offered to the prospective tenant.

This practice is unlawful for many of the same reasons as discussed above regarding forfeiture of security deposits. The landlord has a duty to mitigate damages, and even if the application clearly requires the prospective applicant tenant to accept the unit if offered, the disappointed landlord has a duty to rent the unit to some other tenant, as soon as possible. The tenant who did not occupy is responsible, at most, only if the landlord cannot rent the premises to someone else, and perhaps for the actual costs (such as re-printing the newspaper ad) of securing another tenant.

C. Charging "non-refundable cleaning fees" or similar fees

Some landlords have adopted a practice of charging tenants a "non-refundable cleaning fee," or similar fee, in addition to a security deposit and prepaid rent. This "non-refundable cleaning fee" is never refunded to the tenant, regardless of the

This landlord practice is unlawful, even if the nature of the fee is clearly disclosed to the tenant at the commencement of the lease.

Tenants have a duty to keep their unit "as clean and safe as the condition of the premises permit" (AS 34.03.070). If the tenant performs that duty to keep the unit clean, there is no expense for which the landlord may use the cleaning fee. Thus, the purpose of the "cleaning fee" is to protect the landlord against the tenant's failure to perform that duty. See Bauman v. Island Investments, 100 Cal. notr. 939 (Cal. App. 1973). Indeed, the tenant's failure to perform that duty is one of the few reasons for which the Alaska Act allows the landlord to retain the security deposit (AS 34.03.070). Since the real purpose of the cleaning fee is to protect the landlord from the tenant's failure to perform, it is simply another name for a security deposit. The requirements of the Act apply to a security deposit "however denominated" (AS 34.03.070), so the fact that the charge is called a "cleaning fee" rather than a security deposit does not remove it from the requirements of the Act.

Nor does the fact that the cleaning or security fee is disclosed as "non-refundable" remove it from the requirements of the Act. The fact that the tenant agrees to a non-refundable fee is, in effect, nothing more than an attempted waiver by the tenant of the Act's provisions that a security deposit must be refunded except under certain conditions. However, the Act provides that an agreement to waive a tenant's rights is unenforceable (AS 34.03.040). Thus, the tenant's waiver of the right to have the deposit refunded is not enforceable.

1. Tenant application fees to cover actual processing costs

The practice of charging tenants a non-refundable application fee to cover the landlord's actual, reasonable costs of performing services, such as checking the tenant's credit history, appears to be lawful. This practice is distinguishable from the practice previously discussed, since it does not involve the landlord withholding funds for damages which must be satisfied, nor does it involve holding funds to cover a possible future breach by the

tenant. Thus, it would appear that such a fee is not controlled by the Act.

An argument could be made that one of the purposes of the Act, specifically AS 34.03.070(a), is to limit the total amount of money a tenant would have to pay at the commencement of a lease to a maximum of two months' rent plus rent for the first month. The intent may have been to aid tenants who do not have a large lump sum of money, but who could pay the monthly rent. If so, the legislature may have intended AS 34.03.070 to apply to all sums paid at the commencement of the lease, "however denominated." Based on this rationale, it could be argued that the application fee for the cost of checking the credit history is controlled by the Act.

However, the legislative intent here is not clear. Since the language of the Act controls prepaid rent and security deposits and the application fee here is not a disguised security deposit or prepaid rent, it appears that the better interpretation of our statute is that it does not preclude such an application fee if it is only for the actual, reasonable cost of processing the tenant's application.

LOCKOUTS, and HOLDING TENANTS' PROPERTY FOR RENT

The Uniform Residential Landlord and Tenant Act specifically defines the landlord's rights to access to the dwelling unit. The landlord has the right to:

1. Enter the dwelling unit, at reasonable times, to inspect, make necessary repairs or improvements, and for similar purposes. This should normally be done only after 24 hours notice to the tenant.
2. Enter the dwelling unit in an emergency.
3. Enter and take over the unit if the tenant has abandoned or voluntarily surrendered the dwelling unit.

Except in these limited circumstances, the landlord must obtain a court order to regain possession of a unit (AS 34.03.040(d)). The landlord does not have the right to obtain possession by changing the locks on the unit, thus "locking out" the tenant.

It appears that some landlords have engaged in this practice of "locking out" tenants. This may occur after the landlord had already once given a 30-day Notice to Quit,

but agreed to drop it when the tenant signed an agreement to pay the back rent or vacate the premises by a certain date. Even if the agreement states that the tenant waives notice and eviction procedures, the landlord must still obtain a court order for possession if the tenant does not voluntarily, physically vacate the premises. Since the Act specifically provides that a tenant's waiver of rights is unenforceable, such a waiver and subsequent "lock-out" by the landlord is unlawful.

It is also unlawful for the landlord to withhold a tenant's personal property as an offset (credit) against rent due. The Act specifically abolishes "distrain for rent" and liens against the tenant's personal property (AS 34.03.250). The only circumstances in which the landlord has the right to hold or dispose of a tenant's personal property is if the tenant leaves the personal property on the premises after surrender or abandonment of the premises, or expiration of the lease, and the landlord reasonably believes that the tenant has abandoned the personal property (Abandoning the personal property means not just that the tenant has left it temporarily, but that the tenant does not intend to return for it and has given up all rights of ownership to the property.) Even in these circumstances, the landlord must follow the requirements of the Act regarding abandoned property, AS 34.03.260, which includes giving notice as best possible to the tenants, before taking any action such as selling or destroying the property.

The requirements that a landlord obtain a court order to evict a tenant who will not move voluntarily may, at times, seem burdensome to landlords. Similarly, the landlord may find it burdensome to follow strict procedures before disposing of property the tenant leaves on the premises. However, these are the requirements of the Uniform Residential Landlord and Tenant Act, as passed by the Alaska State Legislature. The Act was passed after careful consideration of the concerns of both landlords and tenants, and landlords must follow these requirements unless and until they are amended by the legislature.

CONCLUSION

It should be emphasized that this supplement does not replace the December 1983 revision, but should be used as a supplement to that version.

In 1974 the Alaska Legislature passed the Uniform Residential Landlord and Tenant Act (AS 34.03.010-380). The purpose of the Act was to simplify, clarify, and modernize Alaskan laws relating to the rental of dwellings. It was also intended to encourage both landlords and tenants to maintain and improve the quality of housing. Since 1974 there have been three amendments to the original law, relating to security deposits and rules for mobile home parks. While the law does not cover every problem a landlord or tenant may have, it was written to protect the rights of both parties.

—NOT PROTECTED UNDER THE LAW

The landlord-tenant law does not cover certain types of rental housing. These are:

1. Residency in an institution (school dorm, jail, hospital, nursing home, etc.)
2. Hotels, motels and other transient housing.
3. Condominiums occupied by the owner.
4. Occupancy under a contract of sale, such as "lease with option to buy".
5. Occupancy of a dwelling owned by a fraternal or social organization of which you are a member.
6. Live-in employment (apartment managers, housekeepers, etc.).
7. Occupancy when the premises are used primarily for agricultural purposes.

If you live in or own one of the above types of housing and have a problem, you may need to see an attorney. Other Alaska laws may apply to your situation.

written notices

Putting things in writing does not mean the landlord and tenant are enemies or do not trust each other. It is simply a good way to do business. Oral agreements made in good faith are legal; however, under the law, a written notice or agreement may be your only protection if something goes wrong, because without written proof of an agreement or a conversation even two honest people can disagree on what was actually said in the past. Written agreements often provide additional protections under the law. Some people hesitate to put agreements in writing because they don't know what to say. There are examples of various notices in the section "Settling Landlord-Tenant Disputes."

Eviction and moving notices and notices for repairs needed must be in writing. Here are some additional things that should be in writing:

1. Receipts for payments of any kind.
2. Promises to fix things.
3. Rental agreements.
4. Details of what needs to be done to get back a deposit.

It cannot be emphasized strongly enough how important this is:

GET IT IN WRITING!



or oral, but written is best. If any disagreement occurs later, both tenants and landlords will have evidence to back their claims.

If a tenant signs a rental agreement, moves in and begins paying rent, the written agreement is still legally binding even if the landlord did not sign it. (AS 34.03.030(a))

If the landlord shows the tenant a rental agreement to which the tenant agrees, moves in and begins paying rent, the written agreement is still legally binding even if the tenant did not sign it. (AS 34.03.030(b))

It is critical that tenants and landlords review and discuss any rental agreements and rules before anyone moves in or money changes hands.

A lease is a type of rental agreement that tells how long the tenant will stay (usually four, six or 12 months). If there is a lease, the landlord cannot raise the rent or evict the tenant unless the tenant breaks promises in the lease. If there is a lease but the tenant decides to move, the tenant is still responsible for the rent or the rest of the lease period, unless the dwelling can be re-rented. Unsigned leases are valid for no more than a year, even if the lease specified a longer time. (AS 34.03.030)

Here are some things which should appear in a rental agreement:

1. Name and address of the owner and his/her manager or agent as well as the tenant's name and address. (AS 34.03.080)
2. The amount of rent, when it is due, where and how it is to be paid.
3. Whether this is a month-to-month agreement or a lease with a definite time limit.
4. When the rent will be considered overdue and what penalty will be imposed.

A small flat fee late charge per month is allowed if the fee approximates reasonable liquidated damages. If a per diem percentage rate is applied, however, the rate cannot exceed the 10.5% per annum rate allowed by AS 45.45.010.

5. What is included in the rent (heat, lights, water, etc.) and what is provided (driveway, garage, furnishings, kitchen appliances, snow removal, storage, laundry, etc.).

6. Total number of full-time occupants and pets allowed.

7. A list of prohibited equipment (snowmobiles, motorcycles, musical equipment, etc.).

8. The amount and type of deposit (cleaning, security, pets, etc.) and what has to be done to get it back.

9. A list of landlord and tenant repair and maintenance duties.

10. Regulations on subleasing or assignment of the property.

RENTAL AGREEMENTS CANNOT

1. Force a tenant or landlord to waive any legal rights. (AS 34.03.040(a)(1)); or
2. Let the landlord get the tenant to sign a document agreeing that the landlord wins an "automatic" judgment against the tenant (called a "confession of judgment") (AS 34.03.040(a)(2)).
3. Require the tenant to agree in advance to pay the landlord's attorney should you go to court. (AS 34.03.040(a)(4)).

responsibilities (AS 34.03.040(a)(3)).

5. Excuse the landlord or tenant from any legal responsibilities such as keeping common areas safe, repairing appliances, providing access to utilities and water, etc. (AS 34.03.050).

6. Force either the landlord or tenant to automatically assign a power of attorney to the other.

7. Allow the landlord to take a tenant's personal belongings. (AS 34.03.250)

Legal provisions in a rental agreement or lease are not enforceable against a tenant even if the tenant signed the agreement.

In addition to the legal provisions above, if the rental agreement contains any of the following items they should be removed before signing:

1. Agreeing to let the landlord come in to the dwelling whenever he/she wants.
2. Agreeing to immediate eviction for nonpayment of rent.
3. Agreeing that the tenant will make all repairs.
4. Excusing the landlord from liability in case of accidents due to his/her neglect.
5. Giving up the tenant's right to the deposit.

TO REMOVE ILLEGAL WORDING, put a line, in ink, through the words, clause or provision that is not legally binding. Both the landlord and tenant should then initial the agreement next to each item removed.

rental agreements for mobile homes

Rental agreements between mobile home park operators and mobile home park tenants:

1. May not prohibit the tenant from selling his mobile home. Exceptions can be made only if the mobile home is in violation of laws or ordinances, the proposed buyer doesn't agree with the terms of the existing rental agreement, or the buyer does not have sufficient financial responsibility if the park operator refuses to allow sale, the operator must notify the tenant of his/her objection to the proposed new owner, in writing, 30 days after the tenants give a written notice of intent to sell the mobile home to a specified buyer (AS 34.03.040(c)(1)).

2. May not require the mobile home tenant to provide permanent improvements to park property (the tenant can be required to maintain existing conditions) (AS 34.03.040(c)(2)).

3. May not require the tenant or prospective buyer to pay a fee to sell or transfer the mobile home unless services are actually performed by the park operator to assist the sale or transfer and the tenant was notified in writing of these charges before he/she moved into the park (AS 34.03.040(c)(3)).

4. May not require a fee to allow the tenant to set up or move a mobile home in to or out of the park unless the park actually assists with the move or set-up and the tenant was notified in writing of these fees before he/she moved into the park (AS 34.03.040(c)(4)).



...that give effective tenants a list of all capital or permanent improvements that will be required (skating, utility hookups, tie-downs, etc.) Before the tenant moves in. Even though park operators may specify the type of equipment, tenants cannot be required to buy their equipment from the park operator or a related company.

rules and regulations

Almost every landlord has rules and regulations. The law requires that the landlord show the tenant the rules before they move in and that a copy of the rules shall be posted on the premises where everyone living there can see it (AS 34.03.130). Tenants should review the rules carefully and if they find they cannot live by the rules, the tenant should not make a commitment to a rental agreement on that dwelling.

Rules must be reasonable, must apply to all tenants equally, and must be clearly defined. Rules may be enforced only if their purpose is to promote the convenience, safety, health or welfare of the tenants; to preserve the landlord's property from abuse; or to make a fair distribution of services and facilities. The landlord cannot make rules that allow the landlord to avoid his/her obligations.

Remember that once the tenant has seen the rules and moved in, he/she is agreeing to abide by these rules. Failure to abide by the rules could lead to an eviction. See the section "Moving Out of Rental Housing."

If the tenant has a lease, the rules may not change until the lease expires.

If the tenant does not have a lease, the landlord may change the rules by outlining the new rule and giving the tenant reasonable advance notice of the change. The time period for the notice must be adequate to allow the tenant to make the change requested. If the new rule is a substantial modification of the rental agreement, such as no longer allowing pets or raising the rent, the notice must be delivered to the tenant at least 30 days in advance of the rental due date. The rule will take effect. Tenants who cannot accept the change in rules must give a 30-day written notice to move. (AS 34.03.130)

change your mind?

Providing the landlord did not misrepresent the place, once an agreement to rent has been made, all or part of the deposit and/or pre-paid rent has been paid, and then the tenant doesn't move in, he/she may not be able to have all his/her money returned. If this happens on a month-to-month agreement (written or oral), the tenant is responsible for as much as one month's rent or pro-rated rent on a day-to-day basis until someone else rents the place, whichever is less. If a lease was signed, the tenant may owe rent until the place is re-rented or the lease period ends, whichever is less. In any case, the landlord must make a reasonable effort to re-rent the dwelling as soon as possible at a fair rental price. (AS 34.03.230)

After an agreement has been made, all or part of the deposit and/or rent paid by the tenant, if the landlord refuses to allow the tenants to move into the rental dwelling, the tenants may:

1. Terminate the agreement with a ten-day written notice and at the time of the 10 days receive back all security deposit and pre-paid rent, or

move in and also sue the landlord and any person wrongfully living there for damages. (AS 34.03.170)

In addition, if the landlord's refusal to allow the tenants to move in is not due to circumstances beyond the landlord's control and is in fact willful and not in good faith, the tenant may sue for 1 1/2 times the tenant's actual damages.

Illegal discrimination

It is illegal for landlords to refuse to rent to someone because of sex, race, religion, national origin, color, marital status, pregnancy or changes in marital status, unless the housing is specifically designated for singles only in advance. (AS 18.60.210 and AS 18.60.240) Within the Municipality of Anchorage, it is also illegal to refuse to rent to someone because of age or because the person has children. (M.C. 5.10.010 and 5.20.020) Other cities may have similar specific ordinances. Check with your local Equal Rights Commission. Exceptions are sometimes made to these regulations when a legitimate business reason can be shown for the limitation. Determinations are made on a case by case basis.

It is unlikely that a landlord will openly refuse to rent to someone for an illegal reason. There are some indications that a landlord may be practicing discrimination in renting when:

—The apartment the tenant called about is suddenly "already taken" when the landlord sees the tenant.

—A place the tenant was told is "rented" remains vacant.

—The rent or deposit is much higher than advertised or charged for similar units.

—Rules will be different for one tenant than for others in the same apartment house or court. (For example, others have pets, but you cannot. A landlord may decide to allow no more pets, but he/she must stick to the new rules as far as all new tenants are concerned.)

—The tenant is not referred to a rental listing in a real estate office that fits his/her needs.

—An advertisement indicates a preference based upon race, color, religion, sex, marital status or national origin.

Everyone should have a free choice about where to live, and there are legal methods of fighting discriminatory practices. If you feel you have been discriminated against and want to do something about it, you can complain to the State Human Rights Commission. The Commission's investigation costs you nothing.

For more help on illegal discrimination, contact the Equal Rights Commission in your town or:

Alaska State Commission for Human Rights
431 W. 7th Avenue
Anchorage, Alaska 99501
Phone: 274-4892

Alaska State Commission for Human Rights
Northern Regional Office
675 7th Avenue, Station H
Fairbanks, AK 99701
Phone: 452-1581

Alaska State Commission for Human Rights
Southeastern Regional Office
Mail Pouch A-4
314 Goldstein Bldg
Juneau, AK 99811
Phone: 465-3560

Pouch 6-650
Anchorage, AK 99502
Phone: 264-4342
TTY: 276-4725

who's responsible?

The law says a specific person must be responsible for the landlord's duties such as maintenance, repairs, collecting rent and receiving notices from tenants or from the court. It is a requirement that when a tenant moves in, he/she must be told in writing the name and address of the owner (or who the owner's agent will be). This information must be kept up-to-date.

If this information is not provided, whoever made the rental agreement or receives the rent becomes the legally responsible person for the landlord. Then, when the tenant is required to give a written notice or wants to sue, he/she should:

1. Contact the owner or his/her agent, or
2. If that information was never officially given to the tenant, contact the person who made the original agreement or takes the rent. (AS 34.03.080)

deposits, prepaid rents and fees

Deposits are often collected for pets, children, cleaning or security before a tenant moves in. Sometimes the tenant will also be asked to pay the last month's rent (pre-paid rent) or a non-refundable fee. The total amount collected for all deposits and pre-paid rent, except the first month's rent, cannot exceed two month's rent. (AS 34.03.070)

Deposits and pre-paid rent along with the first month's rent can make total move-in costs high. Here are some examples of how these move-in costs might be set:

Legal Examples

(Assuming that rent is \$600.00 a month)

1. \$600 first month's rent
\$600 last month's rent
\$800 security deposit
\$1,800 total to move in
2. \$600 first month's rent
\$250 cleaning deposit
\$150 security deposit
\$600 last month's rent
\$1,600 total to move in

Illegal Examples

3. \$600 first month's rent
\$600 last month's rent
\$800 security deposit
\$2,000 total to move in
4. \$600 first month's rent
\$300 cleaning deposit
\$400 security deposit
\$600 last month's rent
\$1,900 total to move in

In example 3, the deposits are higher than allowed, making the total amount collected (not counting the first month's rent) more than two month's worth of rent. In example 4, the sum of the two deposits plus the last month's rent also exceeds two month's worth of rent.

WHERE DOES THE DEPOSIT AND PRE-PAID RENT GO?

The deposit and any pre-paid rent must be deposited by the landlord in a separate trust account in a bank, savings and loan association or with a licensed escrow agent. (AS 34.03.070) A trust account can be any separate savings or checking account labeled "(name of apartments) Rent-

uses the account only for the holding of deposits and prepaid rents. (Exceptions might be made for rural Alaska if there is no bank in town and it would be impractical to bank the money.) Be sure a receipt is written when deposits or prepaid rent is collected. Landlords are required to provide tenants with the terms and conditions under which the prepaid rents or deposit or any portion of those monies may be withheld by the landlord, however, at this time state law does not require interest to be paid to the tenant.

In several Alaskan cities, some landlords have started new and questionable practices of collecting non-refundable fees from tenants, such as an "administrative service fee" at move-in or an "application fee" to get on a waiting list for an apartment. At this time the Attorney General's Office is researching the legality of such fees. It appears that such non-refundable fees may not comply with the law's intent about deposits and therefore may be illegal. If you have questions, see an attorney.

Since security deposits and prepaid rents are required to be held in trust by landlords, these funds should be transferred to the new landlord when rental property is sold. Trust monies not transferred may have been improperly used. Whomever represents him/herself as the landlord at the time the tenant moves out is legally responsible for return of the deposit. Tenants should ask their current landlord about security deposit return. (In some cases the former landlord may also be held responsible for deposit return by both the tenant and/or the new landlord.) If you have questions, see an attorney. (AS 34.03.070(f))

inspections

While the law does not specify that an inspection must be done, it is a good idea for the landlord and tenant to inspect the dwelling together before anyone moves in. Make a list of items needing repair and the date the work should be completed (10 days is standard). Make another list of damage that will not be changed or repaired. Both the landlord and the tenant should sign and date these lists. Each of you should keep a copy. These lists will be handy when the tenant is ready to move out.



WHILE RENTING paying rent/rent increases

The landlord is not required to ask tenants each month for their rent before they are "required" to pay it. If a time and place for payment of rent was not agreed upon when the tenant moved in, it is assumed that the rent will be collected at the dwelling.

If the tenant rents monthly, the rent is due every 30 days, unless otherwise agreed. So, if the tenant moves in on the 8th, the rent is due on or before the 8th of every month.

Rent increases may be made as the landlord sees fit (except with a written lease); however, the law is unclear regarding the notice period which the landlord is required to give. The general interpretation is that a notice of a rent increase is emer-

gency. A landlord's proposed business activity would violate local zoning regulations:

2. A modification of a rule or regulation

In either case, the landlord should give the tenants a written notice of rent increase at least 30 days before the next rental due date. If the tenant does not agree with the rent increase or cannot pay, he/she may give notice to move. Since the law is not clear, landlords and tenants should seek legal advice if they are unsure about a proposed rent increase. Remember, if there is a signed lease, rent may not be increased during the lease period. (AS 34.03.290(b) and AS 34.03.130(b))

If you receive a housing subsidy or live in a federal or state housing project, you may have rights in addition to those provided by state law. For example, the U.S. Department of Housing and Urban Development (HUD) may control rent increases in projects where HUD has provided the loan guarantees to the owner. Contact the HUD office if you have questions.

subleasing

When a lease is signed, the tenant is promising to stay for a certain length of time (usually four, six or 12 months). The tenant is telling the landlord that each and every month, whether the tenant still lives in the apartment or not, he/she will be responsible for paying the rent. Unless the landlord signs a paper saying it's okay with him/her for someone else to move in if the tenant moves out, the tenant cannot just have someone else "take over" the place.

There are usually only two ways for a tenant to get out of a lease:

1. If the landlord breaks his/her part of the bargain (what's written in the lease), the tenant can move, after giving 30 days written notice.

2. Ask the landlord to agree to let the tenant sublease the place. Under the law the landlord has a right to ask for certain information, in writing, about the proposed new tenants. The landlord can reject the new tenants only for certain reasons, and cannot unreasonably prevent subleasing. (AS 34.03.080)

The information the landlord can ask for about the new sublease tenant includes:

1. Name, age and present address;
2. Occupation, present employment and name and address of employer;
3. Marital status;
4. How many people will live in the apartment;
5. Two credit references;
6. Names and addresses of all landlords of this person for the last three years.

Once this information has been given to the landlord, he/she has 14 days to answer the request. No answer within 14 days is considered the same as consent, so the tenant can go ahead and sublease. If the answer is "no," the landlord must give written reasons for the decision.

The only legal reasons a landlord may use to refuse to allow a proposed sublease tenant to take over the lease are:

1. Bad credit record;
2. Too many people;
3. Too many children;
4. Unwillingness of new tenant to accept rental agreement;
5. Tenant's pets are not acceptable.

7. Bad report from former landlord of the new tenant.

If the landlord says "no" to the suggested new tenant, but doesn't give one of the reasons in the above list of legal rejection reasons, the law says the old tenant can either go ahead with the sublease or move out. However, to move out because of the landlord's invalid refusal to sublease, the tenant must give a **WRITTEN NOTICE** to the landlord 30 days in advance of the rental due date by which the tenant plans to move out.

privacy

A common problem landlords and tenants have is that of the tenant's right to privacy. Many landlords feel they can come and go from their rental property whenever they please. Some tenants feel they never have to let a landlord come in.

To clear up the confusion, the law says a landlord must give a tenant 24 hours notice that he/she would like to come for the purpose of making repairs, maintenance, an inspection or showing the place. The landlord may enter only with the tenant's consent and only at reasonable times.

TWO EXCEPTIONS. No such notice is required if it is not possible to contact the tenant by ordinary means, OR if there is an emergency (smoke, water, explosion, etc.)

Landlords cannot abuse their right to request entry or use it to harass tenants, and tenants cannot unreasonably keep a landlord from entering.

If a tenant has a nosy landlord who believes he/she can come and go as he/she pleases, it might be a good idea to get a copy of the law to show the landlord the section called "ACCESS" (AS 34.03.140). If the landlord comes in and will not leave, call the police.

When a landlord does abuse his/her right to enter by coming in without the tenant's permission or repeatedly without need, the tenant can ask a court to demand that the landlord stop (called an injunction). The tenant may also sue for actual damages or one month's rent, whichever is greater, plus court costs and attorney fees. If the tenant wishes to move because the landlord has abused the access privilege, a 10-day written notice from tenant to landlord is required. (AS 34.03.300(b))

If the tenant unreasonably refuses to allow the landlord in, the landlord can get an injunction. The landlord may also sue for actual damages or one month's rent, whichever is greater, or evict the tenant with a 10-day written notice. (AS 34.03.300(a))

landlord duties

These are the things tenants can expect their landlords to do, as required by the law (AS 34.03.100):

1. Make all repairs to keep the dwelling in a liveable condition.
2. Keep all common areas such as stairs, halls, yard and garbage area clean and safe, including snow and ice removal and adequate lighting;
3. Keep in safe and working condition all electrical, plumbing, toilet, air conditioning, ventilating (fans, windows), heating, kitchen and other appliances or facilities supplied by the landlord;
4. Provide and maintain garbage cans and arrange for removal service.

amounts of hot water and heat at all times. Unless there is a severe energy shortage or the furnace or hot water heater is in the complete control of the tenant (as in a house):

5. If requested by the tenant, supply and maintain adequate locks and keys. If the lock can be easily broken, it does not provide adequate protection. A tenant can demand that a proper lock be put on the door.

If the dwelling is in an isolated area where a public sewer or water service is not available, the landlord does not have to provide those services; however, if the landlord privately provides these services at the beginning of the rental agreement, he/she must maintain the services (AS 34.03.100(b)).

In the renting of a house or duplex, the landlord and tenant may agree IN WRITING that the tenant will be responsible for (4), (5) and (6) of the LANDLORD DUTIES listed above. Also, if it is done in good faith, the landlord and tenant of any dwelling may agree that the tenant will do specific repairs, remodeling or maintenance jobs in exchange for payment or reduction of rent, etc. THE LANDLORD CANNOT FORCE A TENANT TO AGREE TO THIS KIND OF ARRANGEMENTS TO GET OUT OF HIS/HER OBLIGATIONS AS A LANDLORD. It must be made in WRITING, signed by both parties. Also, this agreement cannot be made if it will reduce or endanger the services to the other tenants. (AS 34.03.100(d)).

This is a check list of the main things the landlord should repair and maintain:

- doors, windows, roof, floors, walls, and ceilings that leak or have holes;
- plumbing fixtures (must work, not leak and provide a reasonable amount of running, hot and cold water at a reasonable water pressure level);
- a working and safe stove and oven;
- a reliable heating system which provides heat to all rooms in a reasonable amount;
- a safe electrical system (no loose or exposed wires, sockets that do not spark and enough power so the system does not blow fuses when used normally);
- windows or fans that provide fresh air when wanted;
- enough garbage cans to provide an appropriate and safe trash removal service;
- extermination service if roaches, rats, mice or other pests infest the building, apartment or property;
- proper maintenance of any vacuum cleaners, washing machines, dish washers, etc. supplied by the landlord (when not abused or broken by the tenant).

tenant remedies

If there is a serious problem with something mentioned above that is not the tenant's fault, the law provides remedies for the tenant. The landlord must be given a reasonable chance to fix the problem, but if he/she won't fix it, here is what the tenant can do:

1. **MOVE.** The tenant gives the landlord a WRITTEN notice describing the problem and saying that if the problem is not fixed, within 10 days, he/she will move within 20 days. If the problem is fixed within 10 days, but the tenant still wants to move, a regular 30-day notice is required (AS 34.03.160(a)).

DEDUCTIONS. If an essential service (heat, water, sewer, electricity or plumbing) breaks down, the tenant may get the problem fixed and deduct the actual and reasonable expenses from the next month's rent. But first, the tenant must give the landlord a written notice that this is what he/she plans to do, and if the problem is major, the tenant must provide the landlord with a copy of the estimated repair costs. However, once written notice is given, the tenant may immediately proceed with repairs if the costs are very great. It is advisable to contact a lawyer before starting the repairs. If the problem cannot be fixed right away and it makes the dwelling unlivable, the tenant can give the landlord written notice that he/she is moving into substitute housing. The tenant is excused from paying rent until the problem is cured and may charge the landlord for the cost in excess of rent of staying in a hotel or other substitute housing until the problem is fixed (AS 34.03.180).

3. **WITHOLD RENT.** In some cases where the problem is really serious, it may reduce the value of the dwelling. If this happens, tenants may give written notice to their landlord that they refuse to pay a part of their rent until the problem is fixed. Since landlords and tenants often disagree on what is a serious problem, it is wise to see a lawyer before using this remedy.

4. **SUE FOR DAMAGES.** In addition to the remedies listed above, the tenant can sue if the tenant or his/her family have suffered because the landlord failed to fix something after written notice. If the total amount is less than \$2,000.00, the tenant may sue in the state small claims court. For larger claims, the tenant should see a lawyer. (AS 34.03.160(b)).

If the tenant notified the landlord IN WRITING of a problem, and the landlord fixed it within the time allowed, BUT through the landlord's negligence, virtually the same thing happens again within 6 months, the tenant may terminate the rental agreement with a 10-day written notice. The notice must specify the problem and the date of termination. Tenants may not terminate a rental agreement for problems they themselves have caused (AS 34.03.190).

condemned dwellings

Buildings inspected and found to be very unsafe may be condemned. The city or borough housing inspector will tell the landlord that he/she must repair the problem or he/she will be taken to court. If the problems are so serious that the inspector feels the building is beyond repair, the inspector will order that it be torn down.

If a building is condemned, the tenant may come home one day and find a sign posted on the building saying that the place is unsafe for anyone to live there. Tenants should immediately find out when the inspector and landlord expect all the tenants to move. They should also see an attorney before paying any more rent.

fire/casualty damage

If the dwelling is substantially damaged by a fire or other casualty (earthquake, flood, etc.) depending on the amount of damage, there are a couple of things the tenant can do:

1. **Partial damage:** When only a part of the dwelling is damaged and it is lawful for the tenant to continue to live there, the tenant should move out of the damaged part. The rent can be reduced to an

amount that reflects the fair value of the undamaged part of the dwelling (AS 34.03.200(b)).

2. **Total destruction:** If the tenant can no longer live in the place, he/she can move out, notify the landlord and stop paying rent. The rental agreement and responsibility to pay rent ends when the tenant moves (AS 34.03.200(a)).

After the tenant moves, the landlord must return any deposits and/or pre-paid rent to the tenant. Rent paid for the time the tenant didn't live in the dwelling must be returned (counted from the day of the casualty and including the day of the casualty) to the tenant (AS 34.03.200).

HOUSING CODES

The primary objective of a housing code is the protection of the health and safety of the people who live in houses and apartments. A minimum standard of maintenance is set, making the landlord (not his tenants) responsible for keeping rental property in decent shape. The section of this booklet called LANDLORD DUTIES explains what the landlord is expected to repair and maintain.

The law protects tenants who use their right to report code violations. If they call to complain and ask for an inspection, the landlord cannot take revenge by evicting or harassing the tenant. Alaska has a statewide fire code but does not have a statewide housing code.

The following places do have local housing codes. Report substandard conditions to:

- Anchorage**
Building Safety Division at 786-8211
Health & Environmental Protection at 264-4720
- Fairbanks**
Fairbanks Bldg. Official - 452-1881
- Juneau**
Engineering Department Building Division - 586-5231
- Ketchikan**
City Building Inspector - 225-3111
- Seldovia**
City Clerk - 234-7643
- Seward**
City Building Inspector - 224-3331
- Kenai**
City Building Inspector - 283-7537
- Soldotna**
City Building Inspector - 262-9107
- Homer**
Planning & Zoning - 235-8121
- Palmer**
Building Department - 745-2105



tenant duties

These are the duties which the law says tenants must perform to keep their part of the rental agreement (AS 34.03.120).

1. Do keep the dwelling as clean and safe as they can.

2. Do dispose of garbage and other waste in a clean and safe manner;

3. Do keep plumbing fixtures clean;

4. Do pay the rent on time;

5. Do use all facilities and appliances provided reasonably in the manner in which intended;

6. Do not deliberately or carelessly damage, destroy, deface or remove any part of the premises or facilities (or allow their guests to do so);

7. Do replace or repair anything damaged or destroyed because of the tenant's accident or carelessness;

8. Do conduct themselves in a manner that does not unreasonably disturb their neighbors' peaceful enjoyment of the premises. (AS 34.03.120)

If tenants do not uphold their end of the bargain, the landlord can evict them. Eviction notices must be in writing and be specific about the problem in question.

If the tenants were notified of a problem and remedied the problem within the time allowed, but the problem occurs again within 6 months, the landlord may evict the tenant using a 10-day written notice. The notice must specify the problem and the date of termination.

absence/abandonment by the tenant

When the landlord specifies in his/her rental agreement tenants can be required to tell their landlord every time they plan to be gone for more than 7 days. If the tenant plans to be gone only 2 or 3 days, then finds that he/she will actually be gone for more than a week, the tenant must notify the landlord as soon as possible. This is to help protect the property from pipes freezing, etc. Tenants who willfully fail to give notice of being gone can be sued by their landlord for 1 1/2 times the actual damages of any such calamity which occurs during their absence. When tenants are gone, the landlord may go into their place only if there is an emergency or with proper notice. See the section titled "Privacy" (AS 34.03.230).

A landlord may assume the dwelling has been abandoned when (AS 34.03.360(f)):

1. The tenant is behind in rent, and
2. The tenant has left his/her personal belongings in the dwelling but has been gone for more than 7 straight days, and
3. The tenant did not notify the landlord they would be gone for more than seven days, providing their rental agreement requested this.

When a dwelling has been abandoned, the landlord may enter, clean up the place and re-rent it. The obligation of the former tenant to pay rent stops when a new tenant moves in (providing the landlord makes a good faith effort to promptly re-rent the place at a fair rental value) (AS 34.03.230(c)).

If a tenant abandons a dwelling and leaves personal belongings behind, the landlord must notify the tenant of where the property is being held and that the tenant has a minimum of 15 days to remove the property. Property not removed within the time allowed may be:

1. sold at public sale (property not sold may be disposed of);
2. disposed of as the landlord sees fit if it is food or something perishable;
3. destroyed or otherwise disposed of

(such as a charitable donation) when the cost of having a public sale would exceed the value of the items.

The landlord's notice to the tenant must specify what the landlord plans to do with the items if the tenant doesn't re-claim them.

The landlord has to exercise reasonable care over the tenant's belongings and keep them in a safe place but is not responsible for loss not caused by the landlord's own neglect or deliberate action. If the tenant's property is stored in the dwelling, storage charges may not be more than the rent. When the property is held at a commercial storage company, the landlord can pass these costs on to the tenant. (AS 34.03.280(b)).

To hold a public sale, the landlord should post a written or printed sale notice in 3 specific places within 5 miles of the place of the sale not less than 10 days prior to the sale. One of the notices shall be posted at the post office nearest the place of the sale. (AS 09.35.130)

Tenants cannot make claims against a landlord who has fairly exercised his rights regarding abandonment, however, when a landlord deliberately or negligently violates the law governing abandonments, the tenant may sue for actual damages and an equal amount of penal damages. (AS 34.03.260(d)).

MOVING OUT



proper notice

When a tenant wants to move from a month-to-month tenancy (not a lease), the law requires that he/she give a written notice to the landlord at least 30 days before the rental due date specified as the termination date in the notice. If the tenant wishes to move between rental due dates, the notice must be delivered on or before the rental due date which falls at least 30 days before the move-out date.

For example, if rent is due the 8th of each month and the tenant wishes to move March 8, the notice must be delivered to the landlord by February 8. If this same tenant wished to move on March 21st, notice would still need to be delivered by February 8th.

Tenants who wish to terminate a week-to-week tenancy must give a written notice to the landlord at least 14 days before the termination date specified in the notice. For example, a week-to-week tenant wishing to move on July 26th, must give notice by July 12th.

Tenants on a month-to-month tenancy who do not give proper notice are responsible for rent for one rental period or until the place is re-rented, whichever is less. This does not include tenants who are moving because of serious problems which the landlord has not fixed. In addition, tenants who give improper notice may experience a delay in getting their deposit back - see the section "Deposit Return".

When the landlord accepts a moving notice but the tenant doesn't move when they said they would, the landlord may sue for eviction. If the tenant stayed beyond the specified move-out date willfully and not in good faith, the landlord may also sue for 1 1/2 times actual damages.



cleaning and damages

Tenants are expected to clean the dwelling completely before moving including the bathtub, toilet and all appliances. Other cleaning responsibilities should have been listed in the rental agreement, lease or the landlord's posted rules. In general, tenants are expected to leave a place as clean as they found it. This is where a third-party inspection would be helpful - see the section "Moving into Rental Housing."

When the place has been cleaned, the tenant and landlord should inspect the place together, using the damage list prepared when the tenant first moved in as a guide. Tenants cannot be charged for ordinary wear and tear. (See definition of ordinary use at AS 34.03.360(18).) But, since landlords and tenants sometimes disagree on what "ordinary wear and tear" is, here are some guidelines:

1. A family with children or pets will ordinarily wear things out faster - this type of wear is the landlord's responsibility because the landlord can expect this condition when renting to such a family.



2. If something cannot be cleaned because of the landlord's act or negligence it is the landlord's responsibility (non-washable paint on the walls, water leaks from faulty plumbing staining the walls, etc.) (AS 34.03.360(f)).

3. Draperies, shampooing carpets, washing walls, etc. are major cleaning tasks and the law is unclear about whose responsibility these are. If landlords wish tenants to perform these tasks, they should be listed in the rental agreement, lease or the landlord's posted rules.

4. Painting the walls, repairing holes in the carpet, replacing draperies, etc. are tenant responsibilities only if such repair or replacement was needed due to tenant negligence.



Damages caused by the tenant are the tenant's responsibility, even if they were caused by an accident or a guest. The damage deposit can be kept by the landlord in the amount needed to make the repairs. If the tenant has purposely destroyed the landlord's property (throwing a rock through the window, writing on the walls, smashing furniture, etc.) the tenant may be guilty of vandalism and face up to one year in prison, a \$500 fine and will still have to pay for the damage.



deposit return

When the tenant gives proper notice for moving out, the landlord must return a written itemized list of accrued rent and damages together with the amount due the tenant within 14 days of the tenant vacating the dwelling (AS 34.03.070(g)). The notice may be hand-delivered or mailed to the tenant's last known address. If the landlord does not know the new mailing address of the tenant but knows or has reason to know how to contact the tenant, the landlord must make a reasonable effort to deliver the notice and refund to the tenant (AS 34.03.070(g)).

If the tenant does not give proper notice or abandons the dwelling the landlord may take up to 30 days after the tenancy is terminated (or after he/she becomes aware of the abandonment) to return the deposit or a written notice of accrued rent and damages (AS 34.03.070(g)).

WHAT MAY THE LANDLORD KEEP FROM THE DEPOSIT?

The law says deposit money may be kept only if the tenant

- causes damage
- owes back rent
- doesn't leave the place as clean as it was when he/she moved in (other than ordinary wear and tear that cannot be removed by cleaning), or
- does not comply with previously agreed upon requirements of deposit return as specified in the lease, rental agreement or landlord's posted rules. (AS 34.03.070(b))

Some landlords try to get around the law by specifying that unless tenants stay for a certain time period (6 months, for example) that the tenant automatically forfeits a portion of the security deposit. The At-

orney General's Office is researching the legality of such automatic deposit forfeitures. It appears that since such a practice does not comply with the law's definitions of a deposit, it may be illegal. Check with an attorney.



more on moving out: eviction

There are 4 types of eviction notices that may be given by the landlord:

1. Late rent, refusal to allow access, and second notice of tenant's breaking agreement.

-A 10 day written notice is required when a landlord is evicting because the tenant is behind in his/her rent. If the rent is paid before the 10 days are up, the tenant may stay. The notice must inform tenants they have the choice of paying or moving (AS 34.03.220(b)).

Ten days notice is also required when the landlord is evicting because the tenant has refused the landlord's reasonable requests to enter the dwelling (AS 34.03.300(a)), or has substantially broken the rental agreement more than once in a six-month period (AS 34.03.220(a)). If a landlord accepts a partial rent payment after giving a 10-day notice for non-payment of rent, the landlord's right to terminate the tenancy may be waived (AS 34.03.240).

2. Tenant Breach of Other Duties

-A 20 day written notice is required when the landlord is evicting because the tenant has broken an important part of the rental agreement, such as using the place illegally, etc., or if the tenant fails to maintain the rental unit with the result that the health and safety of others are endangered. The landlord may deliver a written notice to correct the problem within 10 days of the receipt of the notice, or the tenant will have to move within 20 days. If the problem is corrected, the tenant may stay (AS 34.03.220(a)).

When there is a breach of a lease, it is recommended that a 20-day notice be given. Leases may not be terminated without cause.



3. Landlord's Choice to Terminate a Month-to-Month Rental

-A 30-day written notice is required when the landlord wishes to evict a tenant on a month-to-month rental agreement for general reasons. This notice must be delivered 30 days in advance of the rental due date specified in the notice as the termination date. For example, if a tenant's rent is due on the 15th of the month and the landlord wishes the tenant to move by October 15th, the tenant must receive the notice on or before September 15th. The

30-day notice does not have to specify the reason for the eviction but it is a good idea to list the reason so both the landlord and the tenant clearly understand the notice. Thirty-day evictions may not be used when there is a lease. To terminate a lease the landlord must have a just reason, such as the tenant's breaking of the lease. See the paragraph 2 this section.



4. Mobile Home Evictions

A one-year written notice is required when a mobile home park operator wishes to evict tenants and their mobile homes because the operator is converting the land to a common interest community, such as condominiums.

More Rules on Mobile Home Evictions

While most renters can be evicted for a variety of reasons, the law says mobile home park tenants can be evicted from the park only for the reasons stated in AS 34.03.225, which are:

1. the tenants are behind in the space rent;
2. the tenants are violating a law or ordinance, and the violation endangers the health, safety or welfare of the others in the park; or
3. the tenant has violated a provision of the rental agreement or lease signed by both parties, and the provision being violated is reasonable and normally enforceable by state law; or
4. there is to be a change in the use of the land on which the park is located. (This reason requires the landlord to give at least 90 days notice.)

Except for item number 4 above, the same notices are required to evict mobile home park tenants as for other types of tenants (AS 34.03.040(c), 34.03.080(d), 34.03.130(c) and 34.03.225).

Evictions, General Information

Many people think that tenants cannot be evicted in the winter in Alaska or if they have small children. This is not true.

Notices to Quit (eviction) from the landlord must be in writing and must be served to the tenant by

1. delivering the notice in person, or
2. leaving the notice at the dwelling when the tenant is absent from the premises, or
3. sending the notice by registered or certified mail in which case an additional 3 days is added to the required notice period. (AS 09.45.100)

Once the tenants receive notice to terminate, notice to quit, or eviction notice from the landlord, they may move at any time during the notice period. They owe rent up until the end of the notice period, however.

Lockouts, Utility Shutoffs or Threats

The landlord may not harass the tenant by:

- shutting off utilities
- changing the locks
- taking the tenant's belongings
- taking possession of the dwelling by force without a court hearing.

cludes the tenant from the premises or willfully diminishes services, the tenant may sue the landlord to regain entry to the premises or terminate the rental agreement and in either case recover up to 1 1/2 times actual damages.

Utilizing a charge or threat of criminal trespass against tenants in order to evict them without the benefit of a court hearing is an abuse of the landlord-tenant law. Police who participate in such an action may be guilty of official misconduct. Tenants may sue both the landlord and the police for conspiracy to abuse the law. See an attorney. (AS 11.56.850)



Subsidized Housing

If you receive a housing subsidy or live in a federal or state housing project, you may have rights in addition to those provided by state law. For example, if you receive a section 8 subsidy from ASHA, the landlord may not be able to evict you without good cause. Contact your local ASHA office if you have questions.

Retaliation by landlord is Prohibited (AS 34.03.310)

The landlord may not "retaliate" (explained below) against a tenant because

1. the tenant complains to the landlord about the landlord's failure to perform the landlord's responsibilities; OR
2. the tenant uses his/her legal rights under the Alaska Landlord-Tenant Law; OR
3. the tenant organizes or joins a tenant union or similar organization; OR
4. the tenant complains to a government agency responsible for enforcement of governmental housing controls.

The law prohibits "retaliation" by the landlord. This means the landlord cannot:

1. raise the rent; OR
2. decrease service (such as shutting off utilities, etc.); OR
3. evict or threaten to evict the tenant (AS 34.03.310(a)).

If the tenants feel illegal retaliation has occurred against them, they can move out or stay and in either case sue for as much as 1 1/2 times their actual damages (AS 34.03.210).

An eviction is not considered illegal retaliation, if the landlord evicts because

- the tenant is behind in the rent; or
- the landlord must make repairs to meet code requirements or big changes that require a vacant dwelling;
- the tenant is using the place for illegal purposes;
- the landlord wants to use the place for something other than a rental dwelling for at least 6 months, or for personal purposes;
- the property is being sold and the new owner intends to use it for personal use, substantially remodel or demolish, or change it from rental use (AS 34.03.310(c)).

Rent increases are not considered illegal retaliation if the landlord can show, in good faith,

cost of maintaining the property (not including the cost of repairing something because of a tenant's complaint) (AS 34.03.310(d)(1)), or

—that similar dwellings are being rented for a higher rate, and in fact the landlord has been undercharging (AS 34.03.310(d)(3)), or

—that the true costs of major improvements made to the property are being passed on to all tenants fairly and equally (AS 34.03.310(d)(2)).

What if the Tenant Won't Move

If the tenant refuses to move at the end of the notice to quit period, the landlord must go to court to evict.

The landlord may not take over the rental dwelling by force or by locking out the tenant.

The court calls most eviction suits by landlords "Forcible Entry and Detainer" (F.E.D.) cases. Here is how an F.E.D. case works.

The landlord files his/her claim with the court. The tenant will receive a complaint and summons to appear in court. The hearing will be scheduled 2-4 days after the summons is served. At the hearing, both the landlord and the tenant will have an opportunity to tell their side of the story.

If the judge finds in favor of the tenant, the tenant will be allowed to stay and the landlord may have to pay the tenant's attorney fees.

If the judge finds in favor of the landlord, the tenant will be served a court order to move. The judge will decide how long before the tenant has to be out. If the tenant still doesn't move, the landlord can get a writ of assistance from the courts that will permit the police to assist in the eviction. In addition, the tenant may have to pay the landlord's attorney fees.

Some Anchorage judges have granted the right to a jury trial when requested by the landlord or the tenant. To date, there has been no Alaska appellate decision affirming this right in an F.E.D. action.

F.E.D. cases are usually handled by district court. For more information on evictions, read AS 09.45.060-160. Forcible Entry and Detainer. Information on preparing an eviction suit may be found in the Alaska Rules of Court-Civil Rules (read rule 85) and in the Alaska Rules of Court-Civil Forms (review forms 170 and 171). The Rules of Court are available in the Alaska Law Library or your local magistrate's office. More specific answers to questions on F.E.D.'s may be found in a booklet prepared by the Administrative Office of the Alaska Court System, inquire at your local court or magistrate's office.

Tenants may have a legal defense or claim against the landlord which could prevent an eviction. Tenants should act quickly if they don't want to be evicted. See an attorney.

settling landlord/tenant disputes

When landlords and tenants disagree, sometimes tempers flare and things may be said and/or done which are wholly outside the law. Sometimes the disagreement becomes just plain ugly.

If there is disagreement on any issue, remember that the court looks favorably on "good faith" reasonable actions that is, action taken in an honest, forthright manner. Try to remain calm. Be sure you are doing everything you can to prevent the situation from getting worse. Gather



your facts and **PUT THEM IN WRITING**. Be sure to pay attention to sections of the law that require written notices and that specify the number of days allowed for landlords or tenants to remedy disagreeable situations. Present your problem to the other party in writing, clearly stating what you want to change and what you will do if the situation doesn't change.

Generally speaking, the rental of dwellings is a business and as in any other business, both parties should conduct themselves in a fair, honest manner. There are not many agencies that will mediate landlord/tenant disputes, and problems are frequently not serious enough to require a lawyer or go to court. Most landlord/tenant problems could be settled by both parties acting "in good faith."

If serious problems do arise, it is always advisable to see a lawyer. But first, give the other person a chance by trying to work it out together.

Common Rental Problems

The most common problem facing landlords and tenants is a failure to get things in writing. In many sections of the law, written notices are required; in other cases, getting things in writing is just good business. Written evidence will help people remember what was agreed upon and may be helpful if you should need to go to court. Putting things in writing will often trigger other legal protections.

Other common problems and their remedies are

1 Problem:

Landlord tells a tenant to move immediately or cuts off essential services without warning.

Remedy:

Evictions are controlled by specific sections of the law. Tenants do not have to move if these rules are not followed and may sue for 1 1/2 times actual damages.

2 Problem:

Tenant refuses to move after receiving an eviction notice.

Remedy:

The landlord should go to court for an eviction order. The State Troopers or city police will carry out the order. In addition, the landlord may sue for 1 1/2 times the actual damages. See the section on Moving Out of Rental Housing.

3 Problem:

The tenant's deposit is not returned and the landlord did not give, in writing, justifiable reasons for keeping the deposit.

Remedy:

Tenants may sue for twice the amount kept. See the section on Moving Out.

4 Problem:

Tenant is habitually late with rent or repeatedly breaks rules.

Remedy:

Late rent and other problems which are repeated within a 6-month period may be grounds for eviction; reread the section on Moving Out or see a lawyer.

Where to Go For Help

Both landlords and tenants can get help from the following sources:

1. The Cooperative Extension Service can provide you with copies of this publication but cannot give legal advice.

Anchorage	786-1080
Bethel	543-2503
Cordova	424-3446
Fairbanks	452-1530
Homer	235-8178
Juneau	586-7102
Ketchikan	225-3290
Delta Junction	895-4215
Kodiak	486-6369
Nome	443-2320
Palmer	745-3360
Sitka	747-6065
Soldotna	262-5824

2. For non-judicial dispute assistance, Anchorage residents can contact the Conflict Resolution Center, P.O. Box 102105, Anchorage, 277-8136 (landlord-tenant line). The (non-profit) Center can assist you in resolving your dispute through conciliation, mediation and/or arbitration for a nominal fee.

3. To file a complaint about the landlord's false advertising, chronic misuse of deposit money or fraud, or for copies of IP's publication, see the Consumer Protection Section, Alaska Department of Law.

Anchorage:
1031 W. 4th, Suite 300
Anchorage, AK 99501
279-0428

Fairbanks
1st National Center
100 Cushman, Suite 400
Fairbanks, AK 99701
456-8588

Juneau
Pouch K. State Capitol
55 Fuller Bldg., Suite 214 4th & Harris
Juneau, AK 99811
465-3692

Valdez
District Attorney's Office, Courthouse
P.O. Box 671
Valdez, AK 99686
835-2462

4. Tenants with low incomes may call Alaska Legal Services for attorney help if your landlord tries to evict you. Be sure you mention the eviction when you call Legal Services:

Anchorage	272-9431
Barrow	852-2311
Bethel	543-2237
Dillingham	843-5653
Fairbanks	452-5401 or 452-5181
Juneau	586-6425
Ketchikan	225-6420 or 225-6440
Kodiak	486-4178
Kotzebue	442-3398 or 442-3496
Nome	443-2951 or 443-2952
Unalaska	581-1025

5. If you need a lawyer but don't qualify for Alaska Legal Services, see the low-cost legal clinics in your town or call the statewide Lawyer Referral Services at 272-0352 in Anchorage. They may be able to refer you to a lawyer in your area.

6. For complaints against state government officials or agencies, contact the State Ombudsman Office:

Anchorage:
3201 "C", Room 606
Anchorage, AK 99503
593-3673

Fairbanks
315 Barnette Street
P.O. Box 74358
Fairbanks, AK 99707
452-4001

Juneau
525 Village Street
Pouch WO
Juneau, AK 99811
465-4970

7. For complaints against Municipality of Anchorage employees or departments, contact the Municipal Ombudsman Office at 264-4461.

8. To file a claim for damages of \$2,000 or less, see the Clerk or magistrate at your local courthouse and ask for their publication, Alaska Small Claims Handbook.

9. For complaints against federal housing projects, call HUD (Housing and Urban Development) at 271-4343.

10. For complaints against state housing projects, call your project manager or ASHA (Alaska State Housing Authority) Central Office at 562-2813.

11. For information on and filing discrimination complaints contact the Anchorage Equal Rights Commission, 620 E. 10th, Anchorage, AK 99501, phone 264-4342 or the Equal Rights Commission in your town.

12. Some cities/towns in Alaska have tenants' unions, tenant advocacy organizations, landlord associations and similar groups that might help you. Check your local phone book for groups in your town.

forms and notices

The following notices were prepared as samples of what is necessary. These samples may not apply in all situations but could be helpful.

**LANDLORD NOTICE TO TENANT OF TERMINATION OF TENANCY
(NOTICE TO QUIT)**

TO: _____ (Tenant)
(Date) _____

(Address)

You are notified that your tenancy is terminated and that you must move from the address listed above on the rent due date which occurs at least 30 days from the date you receive this notice. Your rent is due on the _____ day of _____, 19____. You must be gone by the _____ day of _____, 19____.

The reason you are being evicted is as follows:

If you are not gone by that date, a lawsuit will be filed to evict you.

(Landlord)
Signed _____

Receipt: I received this notice on the _____ day of _____, 19____ at _____
(Tenant)

KEEP A COPY OF THIS NOTICE

**LANDLORD NOTICE TO TENANT OF EVICTION
FOR VIOLATION OF AGREEMENT AND/OR THE LAW**

(Date)
TO _____
(Tenant)

(Address)

You are notified that you have seriously violated your agreement with me and/or your duties under the law. The violation(s) is (are) set out specifically as follows:

If you do not remedy the violation(s) listed above within **TEN DAYS** after the date you receive this notice, your tenancy will terminate in not less than **TWENTY DAYS** from the date you receive this notice, and you must move. Failure to remedy the violation(s) listed above will mean you must move out by the _____ day of _____, 19____.

If you have not remedied the problem(s) and have not moved by the date listed above, a lawsuit will be filed to evict you. If you remedy the problem(s) within **TEN DAYS** you may stay.

Signed _____

(Landlord)

Receipt

I received this notice on the _____ day of _____, 19____ at _____

(Tenant)

KEEP A COPY OF THIS NOTICE

TENANT NOTICE TO LANDLORD OF DEFECTS IN ESSENTIAL SERVICES

(Date)
TO _____
(Landlord)

(Address)

You are notified that you are failing to provide (water/hot water/heat/sewer service or other essential services) at the above address. The specific defect(s) is (are) as follows:

If you do not fix this defect **WITHIN 24 HOURS**, I have a right to:

- 1) have it fixed myself and deduct the cost from my rent
- 2) sue you for damages, or
- 3) move out, stop paying rent, and hold you responsible for my expenses of moving.

Signed _____

(Tenant)

Receipt

I received this notice on the _____ day of _____, 19____ at _____

(Landlord)

KEEP A COPY OF THIS NOTICE

**LANDLORD NOTICE TO TENANT OF EVICTION
FOR NON-PAYMENT OF RENT**

(Date)
TO _____
(Tenant)

(Address)

You are notified that you owe rent in the amount of \$
If you do not pay this rent within **TEN DAYS** of the day you receive this notice, your
tenancy is terminated and you must move. You **MUST** pay your rent in cash, money
order or certified check.

If you have not paid the rent or moved within **TEN DAYS**, a lawsuit will be filed to evict
you. If you deliver your rent to me on or before the **TEN DAY** period, you may stay.

Signed,

(Landlord)

Receipt

I received this notice on the _____ day of _____, 19____ at _____

(Tenant)

KEEP A COPY OF THIS NOTICE

**TENANT NOTICE TO LANDLORD OF TERMINATION OF TENANCY
(BY TENANT)**

(Date)
TO _____
(Landlord)

(Address)

You are notified that I am terminating this tenancy effective on the rent due date which
occurs at least 30 days from the date you receive this notice. My rent is due on the
_____ of each month, so I will be gone by the _____ day of
_____, 19____.

Please send my security deposit of \$ _____ (with explanation
of how it was used) to my new address:

(New address)

I understand that by law my deposit must be returned within 14 days of the date I move.

Signed

(Tenant)

Receipt

I received this notice on the _____ day of _____, 19____ at _____

(Landlord's Signature)

KEEP A COPY OF THIS NOTICE

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For copies of this publication,
see the Consumer Protection
Section, Alaska Department of
Law

Anchorage:

1031 W 4th, Suite 300
Anchorage, AK 99501
279-0428

Fairbanks:

1st National Center
100 Cushman, Suite 400
Fairbanks, AK 99701
456-8588

Juneau:

Pouch K. State Capital
(S.S. Fuller Bldg.,
Suite 214
4th & Harris)
465-3892

Alaska State Legislature
House of Representatives

March 1, 1990

Labor and Commerce Committee

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Draft request and explanation of CS HB 309 (L&C)
Current Draft: Work order 6-0846D, by Bradley, Dated 3/1/90
Previous Draft: Work order 6-0846J, by Bradley, Dated 12/29/89

Following is a copy of the drafting request sent to Legislative Legal Services counsel Dick Bradley, outlining the changes incorporated into the attached CS for HB 309:

Section 1 and 2 - Leave Section 1 (giving landlord/tenant cases priority in court) and Section 2 (technical amendment) as is in previous draft CS.

Section 3 - (Period between service and notice of action brought) Leave the 10 day standard on page 2, line 2 as it is in current law. Change the three day standard in line five (of previous draft) to five days (in current draft).

Section 4 - (Time periods and surety deposits for summons and continuance) Delete everything after the first sentence.

Section 5 - (Technical amendment to current law to comply to changes that are no longer proposed under this draft). Delete entire section.

Section 6 - (Authorizing landlord/tenant cases to be heard in small claims court). Leave as is.

Section 7 - (Persons who do not pay full rent do not acquire rights under this chapter). Redraft this section to require that a person who does not pay the whole rent for the first full rental period acquires no rights to use the premises other than what they have actual paid for and may be subject to a 24 hour eviction notice.

Section 8 - (Allowing landlord to charge three (TWO) times the monthly rent as a security deposit). Redraft section to remove the restriction on security deposits for rental units in excess of \$1,000 a month. (Restrictions limiting security deposits to no more than two times the monthly rent for rental units less than \$1,000/monthly remains as it is under current law).

Section 9 - (Requiring tenants to give a forwarding address to landlords for return of security deposits) Leave as is.

Section 10 - (Expanding the scope of landlord duties a tenant can agree to perform). Leave as is in current law but add a new section allowing tenants to agree to perform landlord's duties for (a)(3) (heating and plumbing systems) as well as duties allowed under current law for rental units in excess of \$1,000 a month. Leave prohibition against elevator maintenance.

Section 11 - (Removal of landlords property from rental premises) Clarify that landlord cannot remove property required by the Act (furnace, plumbing fixtures, etc.) or by a written rental agreement.

Section 12 - (Circumstances under which a landlord can enter rental unit). Delete section.

Section 13 - (Establishing that tenants debt to landlord is satisfied when they pay rent to the new owner when rental property changes ownership). Leave as is.

Section 14 - (Tenant cannot bring claim of deficiencies in rental unit during eviction proceedings unless they had notified landlord prior to proceedings) Rewrite section to clarify that if tenants withheld rent based on provisions under the Act, they must notify the landlord in writing specifying the acts and omissions constituting a breach under the Act in order to use it in court.

Section 15 - (Eviction for failure to pay utility bills) Rewrite section so that landlord may deliver a written notice that the tenancy will terminate in five days if a utility has discontinued service for failure of tenant to pay utility bill. If 1) tenant recontinues service within three days, 2) repays any amount paid by landlord, and 3) no damage occurred to the rental unit as a result of the tenants failure to pay utility bills the rental agreement will not terminate. If any of those conditions are not met, the landlord may terminate the tenancy five (THREE) days after delivery of the notice.

Section 16 - (Acceptance of partial rental payment) Leave as is.

Section 17 - (Time periods when landlord may reenter the rental unit and terminate the agreement when rent has not been paid and tenant is absent). Leave as is.

Sections 18, 19, and 20 (Repeals and reenacts sections dealing with removal, storage, and disposition of tenants property). Delete sections from previous draft.

Section 21 - (Clarifying amendments to current law regarding liability for tenants property to make it easier to understand). Leave as is.

Section 22 - (Continuing the terms of a lease when executing a deed of trust) Leave as is.

Section 23 - (Rights of landlords to receive notice of discontinuance of utility service). Leave as is.

Section 24 - (Review of landlord/tenant pamphlet by Department of Law) Delete section from previous draft.

Section 25 - (Required continuance deposits) Delete section.

Section 26 - (Change civil rule 85 to give priority to landlord/tenant claims on court calendar) Leave as is.

Section 27 - (Change civil rule 8 to allow landlord/tenant claims to be heard in small claims court). Leave as is.

Section 28 - (Require LIO's to make copies of landlord/tenant pamphlet available to the public). Leave as is.

HB 309 is before the House Labor and Commerce on Thursday, March 1, at 3:00 p.m., assuming you can get a working draft to us by that time. Please call me or Ginger Baim at 4954 if you have any questions or need additional information.

dd/gbs90
b/hb309-1

6-0846D/
Bradley
3/1/90

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE BY THE LABOR & COMMERCE COMMITTEE
 2 CS FOR HOUSE BILL NO. 309 (L&C)
 3 IN THE LEGISLATURE OF THE STATE OF ALASKA
 4 SIXTEENTH LEGISLATURE - SECOND SESSION
 5 A BILL

6 For an Act entitled: "An Act relating to the landlord and tenant relation-
 7 ship; relating to tenancies in property secured by
 8 financial obligations; relating to the availability
 9 of the information pamphlet on landlord and tenant
 10 rights; and amending Rule 85 of the Alaska Rules of
 11 Civil Procedure and Rule 8 of the Alaska District
 12 Court Rules of Civil Procedure."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

14 * Section 1. AS 09.45.070 is amended by adding a new subsection to
15 read:

16 (c) The court shall give priority on the calendar to an action
17 filed under AS 09.45.070 - 09.45.160.

18 * Sec. 2. AS 09.45.100 is amended to read:

19 Sec. 09.45.100. REQUISITES OF NOTICE TO QUIT. A notice to quit
 20 shall be in writing and shall be served upon the tenant or person in
 21 possession by being delivered to the tenant or person or left at the
 22 premises in case of absence from the premises, or the notice may be
 23 sent by registered or certified mail, in which case an additional
 24 three days shall be added to the notice period required under AS 09.-
 25 45.110 [10 DAYS].

26 * Sec. 3. AS 09.45.110 is amended to read:

27 Sec. 09.45.110. PERIOD BETWEEN SERVICE OF NOTICE AND ACTION
 28 BROUGHT. An action for the recovery of the possession of the premises
 29 may be maintained in the cases specified in AS 09.45.090(2) when the

1 notice to quit has been served upon the tenant or person in possession
2 for the period of 10 days before the commencement of the action. If
3 an action for the recovery of the premises was filed against the
4 tenant within the previous 12 months, the notice to quit need be
5 served upon the tenant or the person in possession only five days
6 before the commencement of the action. If [UNLESS] the leasing or
7 occupation is for the purpose of farming or agriculture, [IN WHICH
8 CASE] the notice shall be served 90 days before the commencement of
9 the action.

10 * Sec. 4. AS 09.45.120 is amended to read:

11 Sec. 09.45.120. SUMMONS AND CONTINUANCE. Summons in actions for
12 forcible entry and detainer shall be served not less than two [NOR
13 MORE THAN FOUR] days before the date of trial. A [NO] continuance may
14 not [SHALL] be granted for a longer period than two days unless the
15 defendant applying for the continuance gives an undertaking to the
16 adverse party, with sureties approved by the court conditioned to the
17 payment of the rent that may accrue if judgment is rendered against
18 the defendant.

19 * Sec. 5. AS 22.15.040(a) is amended to read:

20 (a) When a claim for relief does not exceed \$5,000 exclusive of
21 costs, interest, and attorney fees, and request is so made, the dis-
22 trict judge or magistrate shall hear the action as a small claim
23 unless important or unusual points of law are involved. When a claim
24 for possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclu-
25 sive of costs, interest, and attorney fees, the district judge or
26 magistrate shall hear the action as a small claim unless important or
27 unusual points of law are involved. The supreme court shall prescribe
28 the procedural rules and standard forms to assure simplicity and the
29 expeditious handling of small claims.

1 * Sec. 6. AS 34.03.010 is amended by adding a new subsection to read:

2 (c) Notwithstanding AS 09.45.110 and AS 34.03.220(b), a person
3 who has not paid rent in full for the first rental period under a
4 rental agreement acquires no right to the use of the premises beyond
5 that portion of the period equitably earned by the amount of rent
6 actually paid and the person is subject to eviction on 24 hour's
7 notice. A person whose right to the use of premises depends upon
8 rights acquired by another person does not acquire rights unless the
9 other person has acquired rights under this chapter.

10 * Sec. 7. AS 34.03.070(a) is amended to read:

11 (a) A landlord may not demand or receive prepaid rent or a
12 security deposit, however denominated, in an amount or value in excess
13 of TWC months' periodic rent. This section does not apply to
14 rental units where the rent exceeds \$1,000 a month.

15 * Sec. 8. AS 34.03.070(g) is amended to read:

16 (g) If the landlord or tenant gives notice that complies with
17 AS 34.03.290, the landlord shall mail the written notice and refund
18 required by (b) of this section within 14 days after the tenancy is
19 terminated and possession is delivered by the tenant to the address
20 supplied by the tenant. If the tenant does not give notice that
21 complies with AS 34.03.290, the landlord shall mail the written notice
22 and refund required by (b) of this section within 30 days after the
23 tenancy is terminated, possession is delivered by the tenant, or the
24 landlord becomes aware that the dwelling unit is abandoned. If the
25 landlord does not know the mailing address of the tenant, but knows or
26 has reason to know how to contact the tenant to give the notice re-
27 quired by (b) of this section, the landlord shall make a reasonable
28 effort to deliver the notice and refund to the tenant. If the tenant
29 does not provide the landlord with an address within 90 days after the

1 tenancy is terminated and if the landlord is unable to contact the
2 tenant, the landlord may retain the amount not applied under (b) of
3 this section.

4 * Sec. 9. AS 34.03.100(c) is amended to read:

5 (c) The landlord and tenant of a one- or two-family residence
6 may agree in writing that the tenant perform the landlord's duties
7 specified in (a)(4), (5), (6), and (7) of this section. A tenant may
8 agree to perform the duties specified in (a)(3) of this section in
9 rental units where the rent exceeds \$1,000 a month. The tenant may
10 not agree to maintain elevators in good and safe working order. They
11 may also agree in writing that the tenant perform specified repairs,
12 maintenance tasks, alterations, and remodeling. Agreements are al-
13 lowed under this subsection only if the transaction is entered into in
14 good faith and not for the purpose of evading the obligations of the
15 landlord.

16 * Sec. 10. AS 34.03.140(a) is amended to read:

17 (a) The tenant may not unreasonably withhold consent to the
18 landlord to enter into the dwelling unit in order to inspect the
19 premises, make necessary or agreed repairs, decorations, alterations,
20 or improvements, supply necessary or agreed services, remove personal
21 property belonging to the landlord that is not covered by a written
22 rental agreement, or exhibit the dwelling unit to prospective or
23 actual purchasers, mortgagees, tenants, workers or contractors.

24 * Sec. 11. AS 34.03 is amended by adding a new section to article 4 to
25 read:

26 Sec. 34.03.155. ADDITIONAL TENANT OBLIGATIONS. If a landlord
27 defaults on a financial obligation that secures property occupied by a
28 tenant of the landlord, the holder of the financial obligation may
advise the landlord and the tenant of the landlord to make payments

1 otherwise due to the landlord directly to the holder of the financial
2 obligation for the benefit of the landlord and holder. A payment made
3 under this section to the holder of the financial obligation dis-
4 charges to that extent the debt of tenant to the landlord.

5 * Sec. 12. AS 34.03.190 is amended to read:

6 Sec. 34.03.190. LANDLORD'S NONCOMPLIANCE AS DEFENSE TO ACTION
7 FOR POSSESSION OR RENT. (a) In an action for possession based upon
8 nonpayment of the rent or in an action for rent when the tenant is in
9 possession, the tenant may counterclaim for any amount recoverable
10 under the rental agreement or this chapter. A tenant may not counter-
11 claim under this section unless, before the landlord filed an action
12 for possession or rent, the tenant had provided the landlord with
13 written notice under AS 34.03.160 specifying the acts and omissions
14 described in AS 34.03.100 that constitute the breach. If a counter-
15 claim is made, the court shall determine whether the defense is sup-
16 ported by the evidence and, if so, may order that

17 (1) the periodic rent [IS TO] be reduced to reflect the
18 diminution in value of the dwelling unit during the period of noncom-
19 pliance;

20 (2) the action be continued for a reasonable time to enable
21 the landlord to cure the violation;

22 (3) the tenant pay into court all or part of the rent that
23 has accrued and that is continuing to accrue [THEREAFTER ACCRUING]; if
24 the violations have not been cured within six months, the court shall
25 enter judgment for the defendant and either refund to the defendant
26 all money deposited or use the money for the purpose of making the
27 dwelling fit for human habitation; if the violations have been cured,
28 the court shall determine the amount due to each party; the party to
29 whom a net amount is owed shall be paid first from the money paid into

1 the court, and the balance by the other party; if no rent remains due
2 after application of this section, judgment shall be entered for the
3 tenant in the action for possession;

4 (4) the tenant vacate the dwelling during the making of
5 necessary repairs, when the repairs cannot be made without vacation of
6 the premises, the tenant to be reinstated upon completion of the
7 repairs.

8 (b) In an action for rent where the tenant is not in possession,
9 the tenant may counterclaim if authorized under [AS PROVIDED IN] (a)
10 of this section but the tenant is not required to pay rent into court.

11 * Sec. 13. AS 34.03.220(a) is amended to read:

12 (a) Except as provided in this chapter, if there is a material
13 noncompliance by the tenant with the rental agreement or noncompliance
14 with AS 34.03.120 materially affecting health and safety, the landlord
15 may deliver a written notice to the tenant specifying the acts and
16 omissions constituting the breach and specifying that the rental
17 agreement will terminate upon a date not less than 20 days after
18 receipt of the notice. If the breach is not remedied in 10 days, the
19 rental agreement terminates as provided in the notice subject to the
20 provisions of this section. If a public utility providing electric-
21 ity, natural gas, or water to the premises occupied by the tenant
22 discontinues the service to the premises for the failure of the tenant
23 to pay for the utility service, the landlord may deliver a written
24 notice to the tenant advising that the tenancy will terminate five
25 days after the delivery of the notice. If, within the three days from
26 the receipt of the notice, the tenant reinstates the discontinued
27 service, repays the landlord for any amounts paid by the landlord to
28 reinstate service, and no damage occurred to the rental unit as a
29 result of the discontinuance of service [IF THE BREACH IS REMEDIABLE

1 BY REPAIRS OR THE PAYMENT OF DAMAGES OR OTHERWISE AND THE TENANT
2 ADEQUATELY REMEDIES THE BREACH BEFORE THE DATE SPECIFIED IN THE
3 NOTICE], the rental agreement will not terminate. In the absence of
4 due care by the tenant, if substantially the same act or omission that
5 constituted a prior noncompliance of which notice was given recurs
6 within six months, the landlord may terminate the rental agreement
7 upon at least 10 days written notice specifying the breach and the
8 date of termination of the rental agreement.

9 * Sec. 14. AS 34.03.220(b) is amended to read:

10 (b) If rent is unpaid when due and the tenant fails to pay rent
11 in full within 10 days after written notice by the landlord of nonpay-
12 ment and the intention to terminate the rental agreement if the rent
13 is not paid within that period of time, the tenancy terminates unless
14 the landlord agrees to allow the tenant to remain in occupancy, and
15 the landlord may terminate the rental agreement and immediately re-
16 cover possession of the rental unit. Only [; ONLY] one written notice
17 of default need be given the tenant by the landlord as to any one
18 default. A landlord who has given written notice to the tenant under
19 this subsection may accept a partial payment of the rent due under the
20 rental agreement and extend the date for the eviction accordingly.

21 * Sec. 15. AS 34.03.230(b) is amended to read:

22 (b) During an absence of the tenant in excess of seven days, the
23 landlord may enter the dwelling unit at times reasonably necessary as
24 provided in AS 34.03.140. The landlord may reenter the dwelling unit
25 and terminate the rental agreement when the rent has not been paid,
26 the tenant failed to give the landlord notice of the absence, and the
27 tenant

28 (1) in a week-to-week tenancy has been absent for three
29 consecutive days;

1 (2) in a month-to-month tenancy has been absent for 10
2 consecutive days.

3 * Sec. 16. AS 34.03.260(d) is amended to read:

4 (d) The landlord is not liable [MAY NOT BE HELD TO RESPOND] in
5 damages in an action by a tenant claiming loss by reason of the land-
6 lord's storage [ELECTION, DESTRUCTION,] or disposition of property
7 under this section. A [, OR SALE. IF, HOWEVER, THE] landlord who
8 deliberately or negligently violates the provisions of this section [,
9 THE LANDLORD] is liable for actual damages and penal damages of an
10 amount not to exceed actual damages.

11 * Sec. 17. AS 34.20.090 is amended by adding a new subsection to read:

12 (d) A lease or a periodic tenancy created by the party or the
13 assigns of the party executing the deed of trust continue according to
14 the terms of the lease or periodic tenancy.

15 * Sec. 18. AS 42.30 is amended by adding a new section to read:

16 ARTICLE 6. RIGHTS OF LANDLORDS IN UTILITY SERVICE.

17 Sec. 42.30.400. RIGHTS OF LANDLORDS TO RECEIVE NOTICE OF THE
18 DISCONTINUANCE OF SERVICE. A public utility that provides electric-
19 ity, natural gas, or water to individual customers shall permit a
20 landlord to register as the owner of an improvement served by the
21 public utility. The public utility may not discontinue service to a
22 tenant of the improvement until 10 days after the public utility has
23 provided to the landlord written notice of an intention to discontinue
24 service.

25 * Sec. 19. Rule 85 of the Alaska Rules of Civil Procedure is amended by
26 adding a new paragraph to read:

27 (c) Priority on the Calendar. The trial court shall give pri-
28 ority on the calendar to an action brought under the forcible entry or
29 detainer provisions of law.

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* Sec. 20. Rule 8 of the Alaska District Court Rules of Civil Procedure is amended by adding a new paragraph to read:

(d) Notwithstanding (a) - (c) of this rule, when a claim for possession under AS 22.15.030(a)(6) does not exceed \$5,000 exclusive of costs, interest, and attorney fees, the district judge or magistrate shall hear the action as a small claim unless important or unusual points of law are involved.

* Sec. 21. The Legislative Affairs Agency shall make copies of the pamphlet prepared by the Department of Law under AS 44.23.020(b)(8) available to members of the public at Legislative Information Offices throughout the state.

Writing on the wall tips police to drug gangs' presence

By Jenn Lamming
Times Writer

A.T. SUN
4/17/88

By the time police in Portland, Ore., realized members of rival Los Angeles drug gangs had moved into their city, it was too late.

Less than two years after the first telltale marks of gang presence were spotted on walls in North Portland neighborhoods, police are battling a well-armed and well-established army of gangsters at least 170 people strong.

Though the flux of the L.A.-based gangs into cities around the country is much publicized today, 20 months ago Portland police came to the realization piece by piece, according to Sgt. Steve Hollingsworth, who works in a special force in Portland schools.

The first clue in Portland was writing on the walls.

"We started seeing graffiti in neighborhoods, and we thought it was kids acting out," said Hollingsworth.

Scrawled across the walls were innocuous letters and numbers, like ES43 Hitmen, 6Deuce, R60, IVC.

Police soon learned they were turf markings of groups or "sets" of Blood

and Crips. They stood for: Eastside 43rd Street Hitmen; 66th Street Crips; the Rolling 00s Crips (from streets like 61st, 62nd and 63rd); and the Imperial Village Crips.

Next came the wars between rival gangs jockeying for the lucrative Portland market.

"We started seeing drive-by shootings on a regular basis," Hollingsworth said. At least one of the three gang-related homicides the city has seen in the last 18 months involved innocent bystanders hit with bullets in the indiscriminate shootings, he said.

Police came face to face with the L.A. gangsters in undercover busts of the city's crack houses.

"They'd bust a crack house and they'd find all these guys wearing blue rags (bandannas) or red rags," said Hollingsworth.

They'd also find guns the likes of which they hadn't seen from Portland's free-lance dealers, independents who were suddenly complaining that California gangs were terrorizing them, Hollingsworth said.

"We used to seize little 22s or 25

autos," Hollingsworth said. "Now we're taking 38s, 357s, 9 millimeters and sawed-off shotguns. With the money they're making they can buy sophisticated weapons and police scanners."

Their money also attracted teens who were looking for identity and an answer to their poverty. One Portland police officer estimated 60 percent of the 170 known gang members in the city are local recruits.

This month, Portland schools are introducing a gang education class for grades four, five and seven to teach children about the gangs and why they should "say no to gangs," Hollingsworth said.

Police in Seattle are also battling a 2-year-old influx of the L.A. drug gangs.

But they have been able to team up with city prosecutors and community groups in a push to drive the Crips and Bloods out, according to Officer Don Church of the Seattle Police Department.

Unlike Anchorage, where the Crips arrested on illegal weapons charges bailed out of jail, Seattle prosecutors try

to keep the suspects behind bars for prosecution.

"By identifying these as people from California we get immediate help from the prosecutor. We also get high bail or no bail," Church said.

In June a new eviction law will go into effect in Seattle allowing landlords to almost immediately kick out tenants they suspect of selling drugs.

Also, the city has a new abatement order that allows the community to direct police to board up a house where narcotics are sold if the landlord doesn't act to evict.

The abatement order lets police bypass the time-consuming process of gaining evidence for a search warrant and serving it, a process they could carry out repeatedly on the same house to no avail, Church said.

In the last two years, federal agencies like the Drug Enforcement Administration have started a system of taking Seattle police cases that are nearly complete and making the arrests so tougher, federal charges can be levied against the gang members, Church said.

H B

293

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: DEC
 Title: An Act increasing civil penalties and removing a cap on total penalties...
 Sponsor: Representative Brown BRU: _____
 Requestor: House Resources Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Amy D. Kyle Phone: 465-2600
 Division: Commissioner's Office Date: _____

Approved by Commissioner: *A.D.K.* Date: 4/28/89
 Agency: Department of Environmental Conservation

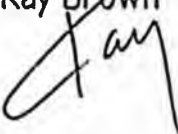
Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Kay Brown

Alaska State Legislature House of Representatives

TO: Representative Cliff Davidson, Co-Chair
Representative Curt Menard, Co-Chair

FROM: Representative Kay Brown

DATE: April 28, 1989 

SUBJ: HB 293/Civil Penalties for Oil Spills

Thank you for scheduling HB 293, legislation that would amend the civil penalty provisions in existing state law to increase civil penalties for oil spills.

The legislation before the Resources Committee today has two fundamental purposes:

- 1) to compensate for the actual but unquantifiable damages attributable to a spill; and
- 2) to provide appropriate incentive through financial penalties for potentially responsible parties to ensure the safe handling of oil and make appropriate response efforts.

As reflected by the statement of legislative findings found in present state statutes regarding civil penalties for the discharge of oil, even minute quantities of oil released into the environment may cause a wide range of serious short- and long-term damages (AS 46.03.758). Some of the more obvious concerns include such things as increased mortalities among larval and juvenile life stages of important commercial fish species; contamination of food chains; or impacts on salmon migration patterns. The Department of Fish and Game and the other state and federal agencies are only now beginning the kinds of investigations that will give insight into the extent of damage that has been done to Prince William Sound.

P. O. Box 20-2661
Anchorage, AK 99520-2661
(907) 272-0207

During Session:
P. O. Box V
Juneau, AK 99811
(907) 465-4998

Unfortunately, the exact nature and extent of oil pollution impacts can not, in many cases, be documented with great certainty or precisely quantified. Moreover, there are a great number of values such as lost recreational opportunities and the impact to Alaska's efforts to attract tourists that also defy quantification. The state's civil penalty provisions are intended to provide compensation for these real but largely unquantifiable impacts, while also providing appropriate incentive for the safe handling of oil.

The current penalties scheme clearly fails to meet either of its fundamental objectives. The Prince William Sound oil spill (and other incidents such as the Cook Inlet oil spill) make it painfully clear that the state's existing oil spill civil penalties are grossly inadequate. Preliminary estimates of the civil penalties that will result from the disaster are on the order of \$14 million, a figure that confirms the inadequacy of existing law to compensate adequately for the disastrous natural resource damages to Prince William Sound. Nor, as is evident from the failure of Exxon and Alyeska to mount a reasonable response effort, does the present penalty scheme provide the kind of incentive needed to ensure safe handling or appropriate response.

HB 293 would increase the civil penalty schedule found in present law to a level that would more appropriately provide both reasonable compensation and the necessary incentive for the safe handling of oil products.

Proposed Committee Substitute

In addition to the statutory changes included in HB 293 as introduced, additional provisions are offered in a proposed Committee Substitute. The proposed CS would include the following provisions:

- Increased base penalty amounts
- elimination of the \$100,000,000 cap on liability in present law
- inclusion of a provision that a five-fold penalty increase would apply where the "discharger did not respond according to an approved contingency plan"
- language to clarify that the credit for removal of oil does not apply to dispersal by way of chemical agent or other means including use of

"biological additives, burning or sinking agents" (Note: dispersal agents do not remove oil at all but rather breaks down, dilutes, or pushes the oil under the surface or into the water column where it continues to create harm.)

- deletion of language in existing law that allows for the reduction or elimination of penalties in the event of "mitigating circumstances"

- additional language to clarify that the state's litigation costs are recoverable

It is important to realize that the current civil penalty provisions in state are a product of a 1977 legislative effort by the Hammond Administration to put in place a meaningful civil penalty provision prior to the start up of Prudhoe Bay. A review of the legislative history of this bill reveals that the legislation originally introduced was the subject of intensive oil industry lobbying that succeeded in severely compromising the bill before it finally achieved passage. The Prince William Sound oil spill makes it abundantly clear that the state's existing civil penalty provisions are completely unacceptable. The proposed CS would address these deficiencies.

* * * * *

Again, I appreciate your scheduling of HB 293. I look forward to the Resource Committee's consideration of this measure.

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: DEC
 Title: An Act increasing civil penalties and removing a cap on total penalties...
 BRU: _____
 Sponsor: Representative Brown
 Requestor: House Resources Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS: None

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Amy D. Kyle Phone: 465-2600
 Division: Commissioner's Office Date: _____

Approved by Commissioner: A.D.Kyle Date: 4/28/89
 Agency: Department of Environmental Conservation

Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

Original sponsors: Brown, M. Davis,
Ellis, et al.

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 CS FOR HOUSE BILL NO. 293 (Resources)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to civil penalties that can be
7 assessed for certain oil discharges; allowing the
8 state to recover full reasonable attorney fees and
9 costs in certain actions; and amending Rule 82,
10 Alaska Rules of Civil Procedure."

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

12 * Section 1. AS 46.03.758(b) is amended to read:

13 (b) No later than the 10th day after the convening of the Second
14 Session of the Sixteenth [TENTH] Alaska State Legislature, the depart-
15 ment shall submit to the legislature regulations establishing the
16 following schedule of fixed penalties for discharges of oil:

17 (1) Subject to (2) of this subsection, the penalties for
18 the following categories of receiving environments may not exceed

19 (A) \$50 [\$10] per gallon of oil which enters an anad-
20 romous stream or other freshwater environment with significant
21 aquatic resources;

22 (B) \$25 [\$2.50] per gallon of oil which enters an
23 estuarine, intertidal, or confined saltwater environment; and

24 (C) \$10 [\$1] per gallon of oil which enters an uncon-
25 fined saltwater environment, public land, or freshwater environ-
26 ment without significant aquatic resources.

27 (2) For discharges of oil which are caused by the gross
28 negligence or intentional act of the discharger, or when the court
29 finds that the discharger did not take reasonable measures to contain

1 and clean up the discharged oil, or where the discharger did not re-
2 spond according to an approved contingency plan, the penalty shall be
3 determined by multiplying the penalty established under (1) of this
4 subsection by a factor of five.

5 * Sec. 2. AS 46.03.758(e) is amended to read:

6 (e) If [AFTER APRIL 19, 1978, IF] a discharge of oil in excess
7 of 18,000 gallons not permitted under applicable state and federal law
8 occurs within the territorial jurisdiction of the state, or into or
9 upon the adjacent outer continental shelf of the state, the following
10 persons, in addition to the person causing or permitting the dis-
11 charge, are jointly and severally liable to the state, in a civil
12 action, for the full amount of penalties established in the regu-
13 lations adopted under this section: [, OR \$100,000,000, WHICHEVER IS
14 LESS,]

15 (1) if the discharge occurs from any commercial or indus-
16 trial facility other than a vessel or offshore platform, the owner,
17 lessee or permittee, and operator of the facility;

18 (2) if the discharge occurs from a vessel,

19 (A) the owner and operator of the vessel; and

20 (B) the owner of the oil carried as cargo on the
21 vessel at the time the vessel was loaded, if the loading occurred
22 within the territorial jurisdiction of the state, or at a deep-
23 water port or other offshore storage facility adjacent to the
24 state; however, if the owner of the oil temporarily transfers
25 ownership of the oil to another person, and the transfer has the
26 purpose or effect of evading the vicarious liability imposed by
27 this section, the transferor will be considered the owner of the
28 oil for the purposes of this subsection; and

29 (3) if the discharge occurs from an offshore platform, the

1 lessee or permittee of the tract or acreage upon which the platform is
2 situated, and the operator of the platform.

3 * Sec. 3. AS 46.03.758(f) is amended to read:

4 (f) The court shall deduct from the penalties for which the
5 person charged is liable under (e) of this section that amount of oil
6 which was removed from the environment as a result of a cleanup opera-
7 tion undertaken in conformity with applicable state and federal law,
8 unless the oil was removed by an agency of state, local or federal
9 government. The dispersal of oil through the use of chemical agents,
10 biological additives, burning or sinking agents, or other means is not
11 considered removal for the purposes of this subsection. The court may
12 estimate the amount of oil removed.

13 * Sec. 4. AS 46.03.758(g) is amended to read:

14 (g) Except as provided in (f) and (j) of this section, the
15 entire penalty specified in the regulations shall be imposed [, EXCEPT
16 THAT A PERSON WHO DISCHARGES OIL INTO A RECEIVING ENVIRONMENT MAY
17 DEMONSTRATE, BY A PREPONDERANCE OF EVIDENCE, THAT MITIGATING CIRCUM-
18 STANCES RELATING TO THE EFFECTS OF THE DISCHARGE WOULD MAKE IMPOSITION
19 OF THE FULL PENALTY INAPPPROPRIATE. IN DETERMINING WHETHER MITIGATING
20 CIRCUMSTANCES EXIST, THE COURT SHALL RECOGNIZE THAT SCIENTIFIC KNOWL-
21 EDGE PERTAINING TO OIL SPILLS IS VERY LIMITED AND IF THERE IS INSUFFI-
22 CIENT KNOWLEDGE EITHER TO PREDICT A BASE CASE OR TO SHOW MITIGATING
23 CIRCUMSTANCES VARYING FROM THAT BASE CASE, THE ADMINISTRATIVELY ESTAB-
24 LISHED SCHEDULE OF PENALTIES SHALL APPLY. IF MITIGATING CIRCUMSTANCES
25 ARE PROVEN BY A PREPONDERANCE OF THE EVIDENCE, THE COURT MAY REDUCE OR
26 TOTALLY ELIMINATE THE PENALTY, IN ACCORDANCE WITH THE PURPOSES OF THIS
27 SECTION].

28 * Sec. 5. AS 46.03.780(a) is amended to read:

29 (a) A person who violates a provision of this chapter, AS 46.04,

1 or AS 46.09, or who fails to perform a duty imposed by this chapter,
2 AS 46.04, or AS 46.09, or violates or disregards an order, permit, or
3 other determination of the department made under the provisions of
4 this chapter, AS 46.04, or AS 46.09, respectively, and thereby causes
5 the death of fish, animals, or vegetation or otherwise injures or
6 degrades the environment of the state is liable to the state for
7 damages, all reasonable attorney fees and costs incurred by the state
8 in collecting the damages, and all reasonable attorney fees and costs
9 incurred by the state in collecting penalties for violations described
10 in this subsection.

11 * Sec. 6. AS 46.03.780(a), as amended by sec. 5 of this Act, has the
12 effect of amending Rule 82, Alaska Rules of Civil Procedure, by allowing
13 the state to recover all reasonable attorney fees and costs in certain
14 actions.

15 * Sec. 7. APPLICABILITY. (a) AS 46.03.758(b), as amended by sec. 1 of
16 this Act, applies to a discharge of oil that occurs on or after the effec-
17 tive date of the regulations required to be submitted to the legislature
18 under AS 46.03.758(b), as amended by sec. 1 of this Act. Regulations
19 adopted under AS 46.03.758 remain in effect until superseded by regulations
20 adopted under AS 46.03.758, as amended by sec. 1 of this Act.

21 (b) AS 46.03.758(e) - (g), as amended by secs. 2 - 4 of this Act,
22 apply to a discharge of oil that occurs on or after the effective date of
23 this Act.

HB

300

HOUSE COMMITTEE REPORT

(7)

Date Referred: March 8, 1990

FURTHER REFERRALS:

Date of Committee Action: 3/21/90

The JUDICIARY Committee considered:

HB 300

HOUSE BILL NO. 300

PUBLIC UTILITY REGULATION

"An Act relating to certain property records maintained by public utilities; and defining 'public' for public utility regulation."

RECOMMENDATIONS:

- be replaced with CSHB300 (JUD) the same title a new title
- have attached amendment(s)
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):
(Dept)

APPROVES PREVIOUS: (Date/Dept)

- fiscal impact _____ fiscal note(s) _____
- zero fiscal note _____ zero fiscal note(s) CEP 3/P/90
- zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

Terry Masten
Robert G. ...
Mike Miller
Al Ellis

SIGNING:

(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>Pete ...</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Mike ...</u>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Chairman's Signature

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 300 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to acquisition and ownership of
7 capital stock of a public utility by a political
8 subdivision; relating to certain property records
9 maintained by public utilities; and including the
10 customers of a public utility that has an annual
11 compensation in excess of \$50,000 in the definition
12 of 'public' for public utility regulation."

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

14 * Section 1. AS 37.10.085(a) is amended to read:

15 (a) Except as provided in (c) of this section, neither [NEITHER]
16 the state nor a political subdivision of the state may

17 (1) make a subscription to the capital stock of a corpora-
18 tion;

19 (2) lend its credit for the use of a corporation; or

20 (3) borrow money for the use of a corporation.

21 * Sec. 2. AS 37.10.085 is amended by adding a new subsection to read:

22 (c) To the extent that the political subdivision is authorized
23 to acquire, own, or operate a public utility, it may exercise that
24 power by acquiring and owning, in a manner consistent with law, all of
25 the capital stock of a corporation that owns or operates a public
26 utility. The political subdivision's authority with respect to lend-
27 ing its credit and borrowing money for the use of the corporation is
28 the same as if the political subdivision had acquired the assets of
29 the corporation.

1 * Sec. 3. AS 42.05.461 is amended to read:

2 Sec. 42.05.461. CONTINUING PROPERTY RECORDS. The commission may
3 require a public utility to establish, provide, and maintain as a part
4 of its system of accounts, continuing property records segregated by
5 the year of placement in service, including a list or inventory of all
6 the units of tangible property used or useful in the public service,
7 identifying the property by location and project [SHOWING THE CURRENT
8 LOCATION OF THE PROPERTY UNITS BY DEFINITE REFERENCE TO THE SPECIFIC
9 LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR STORED]. The commis-
10 sion may require a public utility to keep accounts and records in
11 [SUCH] a manner that shows [AS TO SHOW, CURRENTLY,] the original cost
12 of the property when first devoted to the public service, and the
13 current related reserve for depreciation. Each public utility with
14 annual revenues exceeding \$100,000 shall keep continuing property
15 records.

16 * Sec. 4. AS 42.05.720(3) is amended to read:

17 (3) "public" or "general public" means

18 (A) a [ANY] group of 10 or more customers that pur-
19 chase the service or commodity furnished by a public utility; [AS
20 DEFINED IN (4) OF THIS SECTION; AND]

21 (B) one or more customers that purchase the service or
22 product furnished by a public utility if the total annual compen-
23 sation received by the utility from all sources exceeds \$50,000;
24 and

25 (C) a [ANY] utility purchasing the product or service
26 or paying for the transmission of electric energy, natural or
27 manufactured gas, or petroleum products that [WHICH] are re-sold
28 to a person or group included in (A) or (B) of this paragraph or
29 that [WHICH] are used to produce the service or commodity sold to

the public by the utility;

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A M E N D M E N T

OFFERED IN THE HOUSE

BY REP. GOLL

TO: CSHB 300(L&C)

Page 1, line 6, after "Act":

Insert "relating to acquisition and ownership of capital stock of a public utility by a political subdivision;"

Page 1, after line 11:

Insert new bill sections to read:

** Section 1. AS 37.10.085(a) is amended to read:

(a) Except as provided in (c) of this section, neither [NEITHER] the state nor a political subdivision of the state may

(1) make a subscription to the capital stock of a corporation;

(2) lend its credit for the use of a corporation; or

(3) borrow money for the use of a corporation.

* Sec. 2. AS 37.10.085 is amended by adding a new subsection to read:

(c) To the extent that the political subdivision is authorized to acquire, own, or operate a public utility, it may exercise that power by acquiring and owning, in a manner consistent with law, all of the capital stock of a corporation that owns or operates a public utility. The political subdivision's authority with respect to lending its credit and borrowing money for the use of the corporation is the same as if the political subdivision had acquired the assets of the corporation."

Page 1, line 12:

Delete "Section 1"

Insert "Sec. 3"

Renumber the remaining bill section accordingly.

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to certain property records, etc.
 Sponsor: House Labor & Commerce Comm.
 Requestor: House Labor & Commerce Comm.

Agency Affected: Commerce & Economic Dev.
 BRU: APUC
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached

Prepared by: T.S. Moninski II, Executive Director
 Division: Alaska Public Utilities Commission

Phone: 276-6222
 Date: 3/5/90

Approved by Commissioner: Larry Mercurieff
 Agency: Department of Commerce & Economic Development

Date: 3/6/90

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

ANALYSIS - FISCAL NOTE FOR CSHB 300 (L&C)

The primary impact of the enactment CS for HB 300 is found in Section 2 of the bill which would expand the APUC's jurisdiction by bringing under regulation any utility which serves one or more customers if such service produces gross annual revenue in excess of \$50,000.

While this section has some potential for increasing the number of utilities subject to economic regulation, the projected increase is highly speculative. At this time, the APUC does not anticipate that the workload increase will be substantial and, accordingly, submits a zero fiscal note.

The commission may need to submit a budget request in the future if the actual result of the bill's enactment is to generate significant numbers of new jurisdictional utilities which require regulatory oversight.

6-1283E
Cramer
2/28/90

Original sponsor(s): Labor & Commerce Committee

1 IN THE HOUSE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 300 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to certain property records main-
7 tained by public utilities; and including the custom-
8 ers of a public utility that has an annual compensa-
9 tion in excess of \$50,000 in the definition of 'pub-
10 lic' for public utility regulation."

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16 the year of placement in service, including a list or inventory of all
17 the units of tangible property used or useful in the public service,
18 identifying the property by location and project [SHOWING THE CURRENT
19 LOCATION OF THE PROPERTY UNITS BY DEFINITE REFERENCE TO THE SPECIFIC
20 LAND PARCELS UPON WHICH THE UNITS ARE LOCATED OR STORED]. The commis-
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22 [SUCH] a manner that shows [AS TO SHOW, CURRENTLY,] the original cost
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25 annual revenues exceeding \$100,000 shall keep continuing property
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28 (3) "public" or "general public" means

29 (A) a [ANY] group of 10 or more customers that

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2

HOUSE BILL NO. 300

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to certain property records main-
7 tained by public utilities; and defining 'public' for
8 public utility regulation."

9

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. AS 42.05.461 is amended to read:

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* Sec. 2. AS 42.05.720(3) is amended to read:

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(3) "public" or "general public" means

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(A) a [ANY] group of 10 or more customers that pur-
chase the service or commodity furnished by a public utility and
that is located outside or makes the purchase outside the certifi-
cated service area of ~~the~~ public utility; [AS DEFINED IN (4) OF